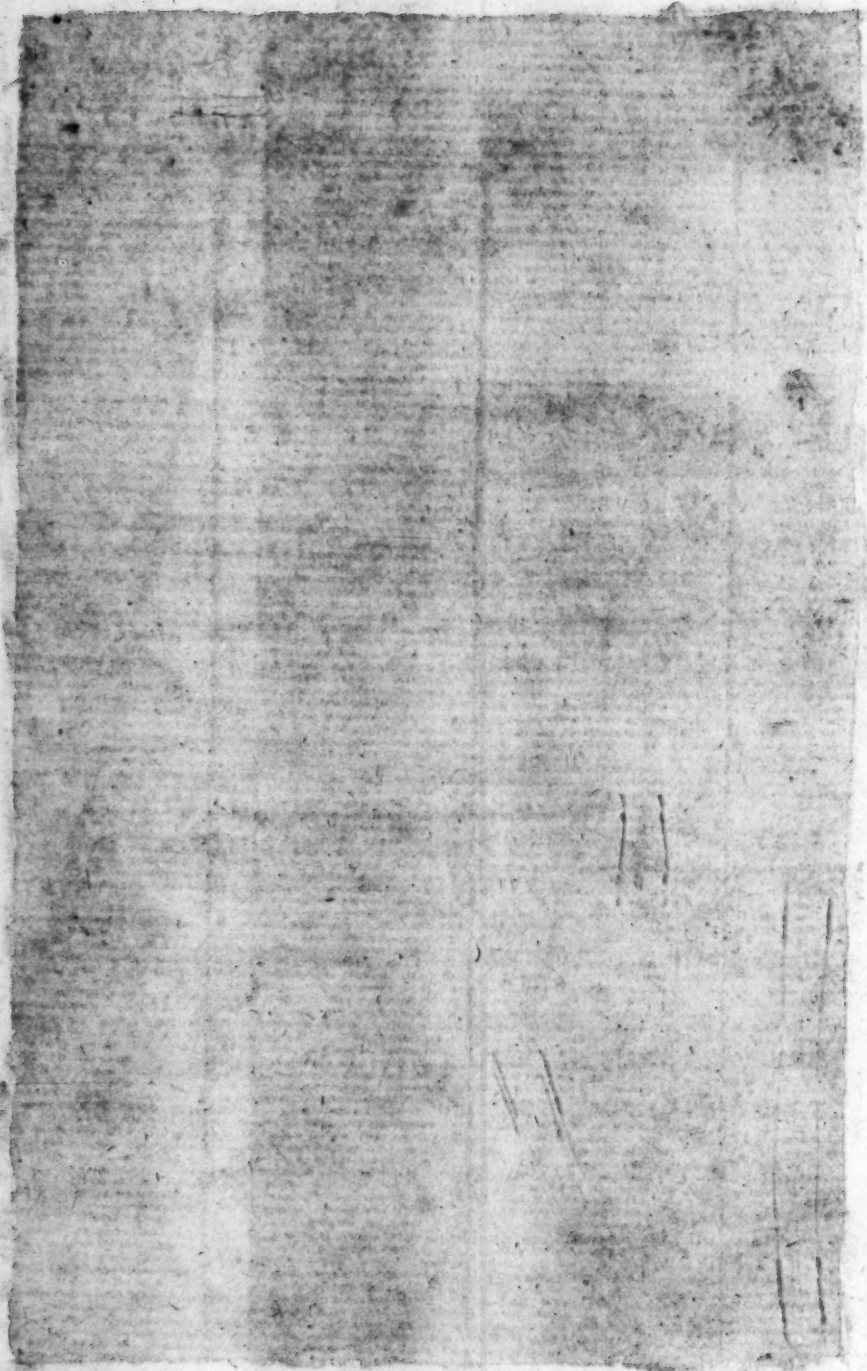


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## England - Laws & Statutes

### -III- Law & Justice





*attorneys*  
**L A W**  
**O F**

**Attornies and Solicitors:**

C O N T A I N I N G

All the STATUTES, ADJUDGED CASES, RESOLUTIONS, and JUDGMENTS concerning them,

Under the following Heads:

- I. In what Cases Attornies shall be allowed; and where not.
- II. How Attornies are to be qualified.
- III. Of retaining an Attorney: Where Appearance is good, and where not: And of the Warrant of Attorney.
- IV. Of the Power or Authority of an Attorney, and the Regularity of his Proceedings.
- V. Of the Determination of the Power of an Attorney; and of dismissing or changing him.
- VI. Of an Attorney's Fees and Disbursements, and the Remedy he has for Recovery of them.
- VII. Of the Misdemeanors, Offences, and Errors for which an Attorney is punishable; and of the Form of the Proceedings against him.
- VIII. Of the Privileges which an Attorney has.

A WORK highly useful to Barristers, Attornies, Solicitors, and every other Person that has any Connection with the Law or Lawyers.


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For J. COOTE, in Pater-noster-Row,

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Attorneys and Solicitors

CONTAINING

All the Statutes, Adjourned Cases, Reports, and Judgments concerning them,

and the following Tables:

I. To what Court Actions shall be allowed; and where not.

II. How Actions shall be brought.

III. Of the several Modes of Proceedings in Actions; and the several Modes of Defence.

IV. Of the several Modes of Proceedings in Appeals.

V. Of the several Modes of Proceedings in Writs.

VI. Of the several Modes of Proceedings in Habeas Corpus.

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T H E  
L A W  
O F  
*Attornies and Solicitors.*

C H A P. I.

*In what Cases Attornies shall be allowed;  
and where not.*

**A**N Attorney is one set in the Place of another, and either publick, as an Attorney at Law, whose Warrant is *Talis ponit loco suo talem Attorniatum*; or private, who has Authority given him to act in the Place and Stead of him by whom he is delegated, in private Contracts and Agreements; which Authority must be by Deed, that it may appear that the Attorney has pursued his Commission. Of this all Persons are capable, and therefore may be executed by Monks, Infants, Feme Coverts, Persons Co. Lit. 92. attainted, outlawed, excommunicated, Villains, Aliens, &c. for this being only a naked Authority, the Execution of it can be attended

B with

with no manner of Prejudice to the Persons under such Incapacities or Disabilities, or to any other Person, who by Law may claim any Interest of such disabled Persons after their Death. But the Person here treated of is an Attorney at Law, who is appointed to prosecute and defend for his Client, and is considered as an Officer belonging to the Courts of Justice; concerning whom there are several statutes and resolutions.

Co. Lit. 128.  
2 Inst. 249.

By the Common Law, the Plaintiff or Defendant, Demandant or Tenant, could not appear by Attorney without the King's Special Warrant by Writ or Letters Patent, but ought to follow his Suit in his own proper Person; by reason whereof there were but few Suits.

8 Co. 58. b.  
2 Inst. 249.  
F. N. B. 25.

And when any one was by the King's Writ commanded to appear, it was always taken that he should appear in Person, and could not appear by Attorney; but after he had appeared, the Courts of Chancery, King's Bench, and Common Pleas, and all other Judges, who held Plea by Writ, might, after Appearance, have admitted him by Attorney: Otherwise when Plea was held without Writ, unless the King granted a Writ *De Attornato faciendo*.

F. N. B. 25.  
c. 26. b.

The King by his Prerogative might grant to the Demandant or Plaintiff, Tenant or Defendant in every Suit to make an Attorney, and order the Court to admit him by Attorney; which ought to be done. And so he may grant to make a General Attorney, in all Pleas moved and to be moved, and in whatsoever Courts: And by his Letters Patent he may express who shall be Attorney, or may grant to make Attorney, who or whom he will,



## Attornies and Solicitors.

will, without naming any Attorney by his special Name. And it appeareth by the Register, that the King may grant the same, as well by Letters Patent under his Privy Seal, as by Letters Patent under his Great Seal.

By the Statute of 20 *Hen. 3. c. 10.* (A.D. 1260.) Every Freeman owing Suit to the County or Lord's Court, may make an Attorney.

By the Statute of *Westm. 1. 3 Ed. 1. c. 42.* (A.D. 1275.) In Writs of \* Affise, Attaint, and *Juris utrum*, the Tenant after Appearance shall not be effoined, but may sue by Attorney.

By the Statute of *Glocester, 6 Ed. 1. c. 8.* (A.D. 1278.) An Attorney may be made in Trespass, where an Appeal lieth not. See 2 *Inst.* 313.

By the Statute of *West. 2. 13 Ed. 1. c. 10.* (A.D. 1285.) † Persons impleaded for Tenements in *Eyre*, or before the Justices at *Westminster*, or in *B. R.* or Assises, in County Court, or Court Baron, may make a General Attorney, to sue for them in all Pleas, moved for or against them, during the Circuit; who shall have full Power, till the Plea determined, or he removed by his Master.

By the Statute of *York, 12 Ed. 2. c. 1.* (A.D. 1318.) Tenants in Affise of *Novel disseisin* (who were not within the Statute of *West. 2. c. 10. 2 Inst.* 378.) may make Attornies, but may plead by Bailiff, as before.

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\* But this extends not to an Affise of *Novel disseisin.* 2 *Inst.* 249.

† And this extends to a Corporation Sole or Aggregate, as well as to private Persons. 2 *Inst.* 378.

## The LAW of

By the Statute 7 Ric. 2. c. 14. (A.D. 1383.) General Attornies made by Persons out of the Realm, may appear and answer for their Master, and make Attornies under them in *Præmunire*, as well as other Writs and Plaints.

By the Statute 33 Hen. 6. c. 7. (A.D. 1455.) There shall be but six Attornies in *Norfolk*, and six in *Suffolk*, and two in *Norwich*, to be elected and admitted by the two Chief Justices; and every other shall forfeit 20*l*.

A particular Act for the Duke of *Bedford* to make his Attornies, 2 Hen. 6. c. 3. (A.D. 1423.)

By the Statute of 3 Hen. 7. c. 1. (A.D. 1486.) In an Appeal of Murder, when Battle lies not, the Appellant may make an Attorney, and appear in the same, till the End of the Suit and Execution.

By the Statute 18 Eliz. c. 5. §. 1. It is enacted, “ that every Informer upon any penal  
“ Statute, shall exhibit his Suit in proper Person, and pursue the same only by himself,  
“ or by his Attorney in Court, and that he  
“ shall not use any Deputy or Deputies at all.”

By the Statute 29 Eliz. c. 5. §. 21. It is enacted, “ that divers of her Majesty’s Subjects  
“ dwelling in the remote Parts of the Realm,  
“ had been many times maliciously troubled  
“ upon Informations and Suits exhibited in  
“ the Courts of the *King’s Bench*, *Common Pleas*,  
“ and *Exchequer*, upon penal Statutes, and  
“ had been drawn up upon Process out of the  
“ Countries where they dwell, and driven to  
“ attend and put in Bail, to their great Trouble and Undoing; and for Reformation  
“ therefore it is enacted, that if any Person

“ or

“ or Persons shall be sued or informed against  
 “ upon any penal Law, in any of the said  
 “ Courts, where such Person or Persons are  
 “ailable by Law, or where by the Leave or  
 “ Favour of the Court such Person or Persons  
 “ may appear by Attorney; in every such  
 “ Case the Person or Persons so to be im-  
 “pleaded or sued, shall and may, at the Day  
 “ and Time contained in the first Process  
 “ served for his Appearance, appear by At-  
 “torney of the same Court where the Process  
 “ is returnable, to answer and defend the same,  
 “ and not be urged to personal Appearance,  
 “ or to put in Bail for the answering such  
 “ Suits.”

And it is now the common Course for the F. N. B. 260  
 Plaintiff or Defendant, in all manner of Ac- D.  
 tions where there may be an Attorney, to  
 appear by Attorney, and put in his Warrant  
 without any Writ. And therefore, generally,  
 in all Actions real, personal, and mixt, the  
 Demandant or Plaintiff, Tenant or Defendant  
 may appear by Attorney.

An Attorney thus made by his Client must Hob. 9.  
 not pervert Justice; for that is contrary to his  
 Oath, and 'tis an Injury to the Court where he  
 serveth. He must also be diligent and faith-  
 ful to his Client, and not reveal what is com-  
 mitted to him in Charge.

But in every Case, where the Party stands  
 in Contempt, the Court will not admit him by  
 Attorney, but oblige him to appear in Person.  
 As, if he comes in by a *Cepi Corpus* upon  
 an *Exigent*. F. N. B. 26. E. Or, if he be  
 outlawed. 2 Cro. 462, 616. *Carth.*



But now, by the Statute 4 & 5 Will. & M.  
c. 18. In Outlawry, except for Treason or  
Felony, the Defendant may appear and reverse  
it by Attorney, without putting in special Bail,  
unless where required by the Court. So upon  
an Attachment, after a Return of a Rescous,  
he shall not make an Attorney. *F. N. B.* 26.  
H. So, if the Defendant comes in upon a  
*Capi Corpus*, he shall not make an Attorney,  
till Plea pleaded. *F. N. B.* 26. E.

Where the Presence of the Party is necessary,  
he cannot appear by Attorney: As, in an Ap-  
peal of Mayhem, the Plaintiff cannot appear  
by Attorney; for the Defendant may demand  
Oyer of the Mayhem. 2 *Inst.* 313.

So an Infant cannot sue or defend by At-  
torney, but by Guardian, or *Prochein Amy*.  
*F. N. B.* 27. H.

If a Man appears by Attorney, where by  
reason of a Contempt, &c. he ought to appear  
in Person, it is not Error; for the Court may  
dispense with a Contempt to themselves.  
8 *Co.* 58. b.

2 Hawk. P. C.  
373.  
See 1 Rol.  
Rep 190  
2 Bull. 299.

In a capital Case the Party must always ap-  
pear in Person, and cannot plead by Attorney:  
Also in Criminal Offences, where an Act of  
Parliament requires that the Party should ap-  
pear in Person; and likewise in \* Appeal, or  
on an † Attachment.

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\* The Appellant and Appellee must both appear in  
Person. 3 *Mod.* 268. 4 *Mod.* 99. 2 *Jones* 210.

† 2 Hawk. P. C. 141.

## Attornies and Solicitors.

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On an Indictment, Information or Action for any Crime whatsoever under the Degree of Capital, the Defendant may, by the Favour of the Court, appear by Attorney; and this he may do as well before Plea pleaded, as in the Proceedings after, till Conviction.

1 Lev. 146.  
Kelw. 165.  
Dyer 346.  
Cro. Jac. 462.  
3 Inst. 125.  
2 Hawk. P.C.  
275.  
March 113.

A Clerk in Court may confess an Indictment for his Client.

6 Mod. 16.

If one be outlawed upon an Indictment for not repairing a Bridge, and thereupon admitted to bring a Writ of Error, he must appear, and in Person assign his Error: So adjudged and agreed by all the Clerks of the Crown-Office in Sir *William Read's Case*; and though the Court greatly pitied Sir William, because he was 90 Years of Age, and very infirm, and had kept his Chamber for a Year and more, yet they held that it could not be done by Attorney, being against the Course of the Court, and doubted whether the King's Privy-Seal would help him; and he was thereupon brought from his House ten Miles from London in an Horse-Litter, upon Mens Shoulders, to the Bar, and came into Court and assigned his Error, and put in Bail to prosecute.

Cro. Jac 616.  
Sir *William Read's Case*.

But if an Administrator brings Error upon an Outlawry of his Intestate for the Murder, he may appear by Attorney; for though the Party himself must have appeared in Person, that he might have stood *Rectus in Curia*, and answered the Matter of Fact; yet in this Case, that Reason fails.

March 113.

See the Statute 7 Hen. 4. c. 13. By which a Judge may examine into the Inability of a Person outlawed, to appear, and the Court

dispense with a personal Appearance; and see *Cro. Jac.* 462. where on Affidavit of Sickness, the Court allowed of an Appearance by Attorney.

2 Sand. 213.  
See 6 Mod.  
86.

If Husband and Wife are sued, the Husband is to make an Attorney for her.

Co. Lit. 135. b.  
2 Inst. 390.  
4 Co. 124.  
Palm. 520.  
2 Sand. 335.

If an Ideot doth sue or defend, he cannot appear by Guardian, *Prochein Amie*, or Attorney, but must appear in proper Person; but otherwise of him who becomes *Non compos Mentis*; for he shall appear by Guardian if within Age, or by Attorney if of full Age.

6 Mod. 16.

In an Attachment of Privilege by the Marshal, he shall have no Attorney because present in Court.

## C H A P. II.

### *How Attornies are to be qualified.*

THE Qualifications of Attornies and the Regulations concerning them are very fully set forth in the following Statutes; which Acts are here inserted at large, for the better Information of all Persons concerned in this Subject.

Stat.



Stat. 3 Jac. 1. c. 7. A. D. 1605.

*An Act to reform the Multitudes and Misdemeanors of Attornies and Solicitors at Law, and to avoid unnecessary Suits and Charges in Law.*

FOR that through the Abuse of sundry Attornies and Solicitors by charging their Clients with excessive Fees and other unnecessary Demands, such as were not, ne ought by them to have been employed or demanded, whereby the Subjects grow to be overmuch burthened, and the Practice of the just and honest Serjeant and Councillor at Law greatly slandered: And for that to work the private Gain of such Attornies and Solicitors, the Client is oftentimes extraordinarily delayed: (2) Be it enacted by the Authority of this present Parliament, that no Attorney, Solicitor, or Servant to any, shall be allowed from his Client or Master, of or for any Fee given to any Serjeant or Councillor at Law, or of or for any Sum or Sums of Money given for Copies to any Clerk or Clerks, or Officers in any Court or Courts of Record at *Westminster*, unless he have a Ticket subscribed with the Hand and Name of the same Serjeant or Councillor, Clerk or Clerks, or Officers aforesaid, testifying how much he hath received for his Fee, or given or paid for Copies, and at what Time, and how often: (3) And that all Attornies and Solicitors shall give a true Bill unto their Masters or Clients, or their Assigns, of all other Charges concerning the Suits which

An Attorney shall have a Ticket of the Money which he giveth for Fees, &c.

An Attorney  
delaying his  
Client's Suit,  
or demanding  
more than is  
due.

which they have for them, subscribed with his own Hand and Name, before such Time as they or any of them shall charge their Clients with any the same Fees or Charges: (4) And that if the Attorney or Solicitor do, or shall willingly delay his Client's Suits to work his own Gain, or demand by his Bill any other Sums of Money or Allowance, upon his Account of any Money which he hath not laid out or disbursed; that in every such Case, the Party grieved shall have his Action against such Attorney or Solicitor, and recover therein Costs and treble Damages, and the said Attorney and Solicitor shall be discharged from thenceforth from being an Attorney or Solicitor any more.

Who only  
shall be Attor-  
nies or Solici-  
tors.

Sett. 2. And to avoid the infinite Numbers of Solicitors and Attornies, be it enacted by the Authority of this present Parliament, that none shall from henceforth be admitted Attornies in any of the King's Courts of Record afore said, but such as have been brought up in the same Courts, or otherwise well practised in soliciting of Causes, and have been found by their Dealings, to be skilful and of honest Disposition: (2) And that none to be suffered to solicit any Cause or Causes in any the Courts afore said, but only such as are known to be Men of sufficient and honest Disposition:

No following  
of a Suit in  
another's  
Name.

(3) And that no Attorney shall admit any other to follow any Suit in his Name; upon Pain that both the Attorney and he that followeth any such Suit in his Name, shall each of them forfeit for such Offence, Twenty Pounds; the one Moiety whereof to our Sovereign Lord the King, his Heirs and Successors, and the other

other Moiety to the Party grieved, to be recovered in any the said Courts of Record afore-said, by original Writ of Debt, Bill, Plaint, or Information, wherein no Manner of Essoign, Wager of Law, or Protection shall be allowed: And that the Attorney in such Case shall be excluded from being an Attorney for ever thereafter.

*Cases adjudged upon the foregoing Statute.*

*Indebitatus assumpsit* was brought by an Attorney, for Fees and Disbursements, in defending Suits in an inferior Court, and in the Court of B. R. The Defendant pleaded *Jac. 1. c. 7. Et per Cur.* 1st, The Statute may as well be pleaded to an *Indebitatus assumpsit* as to the Action of Debt, unless a special Promise be laid; but to a special Promise or an *Insimul computassent*, 'tis no Plea. 2dly, The Statute does not extend to Attornies in inferior Courts, but only to Attornies in the Courts at *Westminster*; so that it is no Plea as to the Plaintiff; *Ergo* Judgment *pro Quer.* 1 *Salk.* 86.

In an *Assumpsit* the Plaintiff declares, that the Defendant retained him as his Attorney to follow his Causes in the King's Bench, Chancery, and Court of Request, and gave him so much in Hand to defray his Charges, and promised to pay him what more he should lay out, and alledges, that he laid out 10*l.* more than he received for Fees of Counsel, and other Charges in the Defendant's Suits, which the Defendant hath not paid, &c. The Defendant

Stat. 3 Jac. 1. c. 7. extends only to Attornies in the Courts at Westminster.

Stat. 3 Jac. 1. does not extend to a special Action upon his Promise, and to give a Ticket of his Wages.



dant pleads the Statute 3 Jac. 7. that the Plaintiff did not give a Ticket to him of his Charges, &c. and after Demurrer it was adjudged for the Plaintiff, for the Statute doth not extend to a special Action upon a Promise; and so it was adjudged in *Dobbins* his Case. *Aleyn*, 4. *Evely* versus *Livermore*.

Raym. 245.

The Plaintiff counts specially as Attorney, for several Fees and Sums of Money by him expended in several Suits for the Testator of the Defendant, and that he demanded them, and neither the Testator nor the Defendant had paid them. The Defendant pleads the Statute of 3 Jac. 1. c. 7. and that the Plaintiff had not given to the Testator, nor to the Defendant himself before the Writ brought, any Bill of Charges according to the Statute; Upon this the Plaintiff demurs, and adjudged for the Defendant, that it is a good Plea. *Brooks* versus *Hague*, *Mich.* 30 *Car.* 2.

Raym. 57.

Trin. 4 Jac. 2.

Jordan versus Powell.

The Case was; The Plaintiff, per *Thomas Hancock*, his Attorney, brought his Action against the Defendant, and declared in *Assumpsit* upon three Promises; the first was in Consideration of Work done, and for prosecuting and defending Suits in *B.R.* *C.B.* and in Chancery, by the Plaintiff, as Solicitor, &c. at the Request of the Defendant; the second was upon an executory Consideration to prosecute and defend Suits, and alledging a Performance; and the third was upon a general *Infimul computasset*.

The Defendant pleaded Specially, *viz.* That if those Promises or any of them, were made by the Defendant to the Plaintiff, *Prout*, &c. they were made that the Plaintiff should be his

his Attorney and Solicitor for prosecuting and defending all Suits in the Courts at *Westminster*, *et non aliter*; and he likewise pleaded the Statute 3 Jac. 1. c. 7. and averred that the Plaintiff *had not delivered to him any Bill of Charges, &c. subscribed with his own Hand.*

And upon a Demurrer to this Plea, the Plaintiff had Judgment without any Argument, because the Statute extends only to Money due for Fees; and here the Defendant had pleaded generally to all the Promises laid in the Declaration, and one of them being an *Insimul computasset*, in which other Money may be included; and so if the Defendant would have the Benefit of the Statute, he ought to have pleaded, *quoad* the two Promises, and not generally to all, as he had done. Judgment for the Plaintiff. *Trin. 4 Jac. 2. Jordan versus Powell, Raym. 57.*

*Assumpsit* for Attorney's Fees, in which the Plaintiff declared specially upon a Prosecution of a Writ of *Habeas Corpus cum Causa*, to remove a Plea levied against the Defendant *Fanshaw* by one T. S. in an inferior Court, *viz.* *Malden Court in Essex*, and also for defending in that Suit after it was removed here in *B. R.*

Raym. 147.  
Hil. 1 Will. &  
M. Brick-  
wood an At-  
torney *versus*  
Fanthaw.

The Defendant pleaded the Statute 3 Jac. 1. c. 7. and avers, that the Plaintiff had not produced to him (the Defendant) any Tickets for the Fees of Counsel, &c. under their Hands as he ought.

And upon a Demurrer to this Plea, the Plaintiff had Judgment, because this Statute did not extend to Matters transacted in inferior Courts, but only to Suits in the Courts of *Westminster-Hall*;—*quod nota.*

Stat.

Stat. 2 Geo. 2. Ch. 23.

*An Act for the better Regulation of Attornies and Solicitors.*

Preamble.

After 1 Decem.  
1730 no Per-  
son to be ad-  
mitted an At-  
torney, unless  
he take the  
Oath, and be  
inrolled.

FOR the better Regulation of Attornies and Solicitors, practising in any of the Courts of Law or Equity, in that Part of *Great Britain* called *England*, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Person, from and after the first Day of *December* one thousand seven hundred and thirty, shall be permitted to act as an Attorney, or to sue out any Writ or Process, or to commence, carry on, or defend any Action or Actions, or any other Proceedings, either before or after Judgment obtained, in the Name or Names of any other Person or Persons in his Majesty's Court of King's Bench, Common Pleas, or Exchequer, or Dutchy of *Lancaster*, or in any of his Majesty's Courts of Great Sessions in *Wales*, or in any of the Courts of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or in any other Court of Record in that Part of *Great Britain* called *England*, wherein Attornies have been accustomedly admitted, and sworn, unless such Person shall take the Oath herein after directed and appointed to be taken by Attornies, and shall also be admitted and inrolled, on or before the said first Day of *December* one thousand seven hundred and thirty,



thirty, in such of the said Courts where he shall act as an Attorney, or shall be sworn, admitted, and inrolled, in the said respective Courts, after the said first Day of *December* one thousand seven hundred and thirty, in such Manner as is herein after directed.

*Seet. 2.* And be it further enacted by the Authority afore said, That the Judges of the said Courts respectively, or any one or more of them shall, and they are hereby authorized and required, before they shall admit such Person to take the said Oath, to examine and inquire, by such Ways and Means as they shall think proper, touching his Fitness and Capacity to act as an Attorney, and if such Judge or Judges respectively shall be thereby satisfied, that such Person is duly qualified to be admitted to act as an Attorney; then, and not otherwise, the said Judge or Judges of the said Courts respectively shall, and they are hereby authorized to administer to such Person the Oath herein after directed to be taken by Attornies, and after such Oath taken, to cause him to be admitted an Attorney of such Court respectively, and his Name to be inrolled as an Attorney in such Court respectively, without any Fee or Reward, other than one Shilling for administering such Oath; which Admission shall be written on Parchment, in the *English* Tongue, in a common legible Hand, and signed by such Judge or Judges respectively, whereon the lawful Stamp shall be first impressed, and shall be delivered to such Person so admitted.

Judges to examine into his Capacity, before Admission.

*Seet.*

None to be permitted to act as a Solicitor, unless he take the Oath, and be inrolled.

*Seet. 3.* And be it further enacted by the Authority aforesaid, That no Person from and after the first Day of *December*, in the Year of our Lord one thousand seven hundred and thirty, shall be permitted to act as a Solicitor, or to sue out any Writ or Process, or to commence, carry on, solicit, or defend any Suit, or any Proceedings, in the Name of any other Person, in any Court of Equity, either in his Majesty's High Court of *Chancery*, Court of Equity in the *Exchequer* Chamber, Court of the *Dutchy* Chamber of *Lancaster* at *Westminster*, or Courts of the Counties Palatine of *Chester*, *Lancaster*, or *Durham*, or of the Great Sessions in *Wales*, or in any other inferior Court of Equity in that Part of *Great Britain* called *England*, unless such Person shall take the Oath herein after directed and appointed to be taken by Solicitors in Courts of Equity, and shall also be admitted and inrolled on or before the said first Day of *December* one thousand seven hundred and thirty, in such of the said Courts of Equity, where he shall act as a Solicitor, or shall be sworn, admitted, and inrolled after the said first Day of *December*, in such manner as is herein after directed.

Courts of Equity to examine Solicitors.

*Seet. 4.* And be it further enacted by the Authority aforesaid, That the Master of the Rolls, two of the Masters of the *Chancery*, the Barons of the Court of *Exchequer*, the Chancellor of the *Dutchy* of *Lancaster*, and the Judges of the said other Courts of Equity for the Time being respectively, or any one or more of them shall, and they are hereby authorized and required, before he or they shall admit any Person to take the said Oath, to examine

examine and inquire, by such Ways and Means as he or they shall think proper, touching his Fitness and Capacity to act as a Solicitor in such Courts of Equity respectively; and if the said Master of the Rolls, or two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, or the Judges of the said other Courts of Equity for the Time being, or any one or more of them respectively, shall be thereby satisfied, that such Person is duly qualified to be admitted to act as a Solicitor in such Court of Equity, then, and not otherwise, the said Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the said other Courts of Equity for the Time being respectively, or any one or more of them shall, and they are hereby authorized to administer to such Person the Oath herein after directed to be taken by Solicitors, and, after such Oath taken, to cause him to be admitted a Solicitor in such Court of Equity, and his Name to be inrolled as a Solicitor in such Court, without any Fee or Reward, other than one Shilling for administering such Oath, which Admission shall be written on Parchment in *English*, and in a common legible Hand, and signed by the Master of the Rolls, two Masters of the Chancery, the Barons of the Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the said other Courts of Equity respectively, or such of them who shall admit such Person to be a Solicitor, whereon a treble Forty Shillings Stamp shall be first impressed,



and shall be delivered to the Person so admitted.

After 1 Dec.  
1730. none to  
act as Attor-  
ney, unless he  
has served a  
Clerkship and  
been admitted.

*Sect. 5.* And be it further enacted by the Authority aforesaid, That from and after the First Day of *December* one thousand seven hundred and thirty, no Person, who shall not before the said first Day of *December* have been sworn, admitted, and inrolled, pursuant to the Directions of this Act, shall be permitted to act as an Attorney, or to sue out any Writ or Process, or to commence, carry on, or defend any Action or Actions, or any Proceedings, either before or after Judgment obtained, in the Name or Names of any other Person or Persons, in any of the Courts of Law afore-  
said, unless such Person shall have been bound, by Contract in Writing, to serve as a Clerk, for and during the Space of five Years, to an Attorney duly and legally sworn and admitted, as herein before is directed, in some or one of the Courts herein before mentioned; and that such Person, for and during the said Term of five Years, shall have continued in such Service; and also unless such Person, after the Expiration of the said Term of five Years, shall be examined, sworn, admitted, and inrolled in the same Manner as the Persons, who shall be admitted Attornies of the said Courts, are herein before required to be examined, sworn, admitted, and inrolled.\*

*Sect.*

A Clerk to G.  
as a Scrivener,  
tho' also an At-  
torney, not to be  
admitted.

\* *L.* had served an Apprenticeship to *G.* a Scrivener in the City, and also a sworn Attorney of this Court. By the Tenor of the Articles, *G.* covenanted to instruct *L.* in the Art and Mystery of a Scrivener; and  
it

*Sett.* 6. And be it further enacted by the Authority aforesaid, That the Judges of the said Courts respectively, or any one or more of them shall, and they are hereby authorized and required, before they shall admit such Person to take the said Oath, to examine and inquire, by such Ways and Means as they shall think proper, touching his Fitness and Capacity to act as an Attorney; and if such Judge or Judges respectively shall be thereby satisfied, that such Person is duly qualified to be admitted to act as an Attorney, then, and not otherwise, the said Judge or Judges of the said Courts respectively shall, and they are hereby authorized to administer in open Court, to such Person, the Oath herein after directed to be taken by Attornies, and, after such Oath taken, to cause him to be admitted an Attorney in such Court, and his Name to be inrolled as an Attorney in such Court, without any

Judges, before they admit them to take the Oath, to examine their Fitness.

it appearing that G. during the Term of five Years specified in the Articles, had never practised as an Attorney, but acted as a Scrivener only. Application was made to Lord Justice, and in the *Treasury*, that L. might be sworn an Attorney, which was refused; he not having served as Clerk to an Attorney, but as Apprentice to a Scrivener.

*N. B.* There was formerly the same Determination in the Case of a young Man who had served Mr. *Metcalf*, an Attorney and Scrivener in *Wood Street*: *Metcalf*, during the Term of five Years specified in the Indentures of Apprenticeship, practised in both Capacities; but the Covenant in the Articles being to instruct the Apprentice in the Art of a Scrivener only, the Judges refused to admit him as an Attorney. 1 *Barnes* 33.

Fee or Reward, other than one Shilling for administering such Oath, which Admission shall be written on Parchment in the *English* Tongue, in a common legible Hand, and signed by such Judge or Judges respectively, whereon the lawful Stamps shall be first impressed, and shall be delivered to the Person so admitted.

After 1 Dec.  
1730. none to  
act as Solicitor  
before he has  
served a  
Clerkship and  
be duly ad-  
mitted.

*Sect. 7.* And be it further enacted by the Authority aforesaid, That from and after the first Day of *December* one thousand seven hundred and thirty, no Person, who shall not, before the said first Day of *December*, have been sworn, admitted, and inrolled, pursuant to the Directions of this Act, shall be permitted to act as a Solicitor, to sue out any Writ or Process, or to commence, carry on, solicit, or defend, any Suit or Proceedings in the Name or Names of any other Person or Persons, in any of the Courts of Equity aforesaid, unless such Person shall have been bound by Contract in Writing to serve as a Clerk, for and during the Space of five Years, to a Solicitor duly and legally sworn and admitted, as herein before is directed, in some or one of the Courts of Equity aforesaid, and for and during the said Term of five Years shall have continued in such Service; and also unless such Person, after the Expiration of the said Term of five Years, shall be examined, sworn, admitted, and inrolled, in the same Manner, as Persons, who shall be admitted Solicitors in the Courts of Equity aforesaid, are herein before required to be examined, sworn, admitted, and inrolled.

*Sect.*



*Stat. 8.* And be it further enacted by the Judges of the Authority aforefaid, That the Master of the Courts of E-Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the faid other Courts of Equity, for the Time being refpectively, or any one or more of them fhall, and they are hereby authorized and required, before he or they fhall admit fuch Perfon to take the faid Oath, to examine and inquire by fuch Ways and Means as he or they fhall think proper, touching his Fitness and Capacity to act as a Solicitor in Courts of Equity; and if the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and fuch Judge or Judges of the faid other Courts of Equity, for the Time being refpectively, fhall be thereby fatisfied that fuch Perfon is duly qualified to be admitted to act as a Solicitor in fuch Court of Equity; then, and not otherwife, the faid Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the faid Judges of the faid other Courts of Equity for the Time being refpectively, or any one or more of them fhall, and they are hereby authorized to adminifter in open Court, to fuch Perfon, the Oath herein after directed to be taken by Solicitors, and after fuch Oath taken, to caufe him to be admitted a Solicitor in fuch Court of Equity, and his Name to be inrolled as a Solicitor in fuch Court, without any Fee or Reward, other than one Shilling for adminiftring fuch Oath;

which Admission shall be written on Parchment in the *English* Tongue, and in a common legible Hand, and signed by the Master of the Rolls, two Masters of the Chancery, the Barons of the Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the said other Courts of Equity respectively, or such of them who shall admit such Person to be a Solicitor, whereon a treble forty Shillings Stamp shall be first impressed, and shall be delivered to the Person so admitted.

Not to exclude Persons from being admitted, who have, before 25 March 1729. been bound for four Years.

*Sett.* 9. Provided always, and it is hereby enacted, That this Act, or any Thing herein before expressed and contained, shall not be taken or construed to exclude any Person from being sworn, admitted, and inrolled to be an Attorney in any of the Courts of Law aforesaid, who hath, on or before the twenty-fifth Day of *March* one thousand seven hundred and twenty-nine, been bound by Contract in Writing to serve as a Clerk to any Attorney, or Person practising as such, in some or one of the Courts of Law aforesaid, for any Term not less than four Years; or from being sworn, admitted, and inrolled to be a Solicitor in any of the Courts of Equity aforesaid, who hath, on or before the said twenty-fifth Day of *March* one thousand seven hundred and twenty-nine, been bound by Contract in Writing, to serve as a Clerk to any Person practising as a Solicitor in any of the Courts of Equity aforesaid, for any Term not less than four Years, so as such Writing, in case any Sum of Money hath been paid or given for or in respect of such Clerkship, hath the legal Stamp thereon impressed, and shall be registered

stered in the Stamp Office on or before the twenty-fifth Day of *March* one thousand seven hundred and thirty; but that any Person, having been bound to serve as a Clerk to any Attorney, or Person practising as such, and having served as aforesaid, may, after the Expiration of the said Term of four Years, be examined, sworn, admitted, and inrolled to be an Attorney of any of the Courts of Law aforesaid; and any Person, having been bound to serve as a Clerk to any Person practising as a Solicitor, and having served as aforesaid, may, after the Expiration of the said Term of four Years, be examined, sworn, admitted, and inrolled, to be a Solicitor in any of the Courts of Equity aforesaid, for the same Fee, and in the same Manner, as the Persons, who shall be admitted Attornies or Solicitors, are herein before required to be examined, sworn, admitted, and inrolled respectively; any thing in this Act contained to the contrary notwithstanding.

*Sett.* 10. Provided also, and it is hereby further enacted, That it may be lawful, from and after the said first Day of *December* one thousand seven hundred and thirty, for any Person, who shall be sworn, admitted, and inrolled to be an Attorney in any of the said Courts of King's Bench, Common Pleas, Exchequer, Courts of Great Sessions, Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or who shall be sworn, admitted, and inrolled to be a Solicitor in the said Court of Chancery, Court of Equity in the Exchequer Chamber, Court of the Dutchy Chamber of *Lancaster* at *Westminster*, Courts of Equity of the Counties

Attornies or Solicitors with Consent of an Attorney of another Court may sue out Writs, &c. in such Court.



Palatine of *Chester*, *Lancaster*, and *Durham*, and of the Great Sessions in *Wales*, or any of them, as herein before is directed, by and with the Consent and Permission of any Attorney in any of the said other Courts of Record at *Westminster*, Courts of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, Courts of Exchequer at *Chester*, and Courts of the Great Sessions in *Wales*, such Consent being in Writing signed by such Attorney, and in the Name of such Attorney, to sue out any Writ or Process, or to commence, carry on, prosecute, or defend any Action or Actions, or any other Proceedings in such Court, notwithstanding such Person is not sworn, or admitted to be an Attorney of such Court; any Law or Statute to the contrary notwithstanding.

Judges not to swear a greater Number of Attornies than formerly allowed.

*Seet. 11.* Provided likewise, and it is hereby further enacted and declared, That nothing in this Act contained shall extend either to require or authorize any Judge or Judges of any Court of Record to swear, admit, or inroll any more or greater Number of Persons to be Attornies of such Court, than by the ancient Usage and Custom of such Court hath been heretofore allowed.

Clerks on Deaths of their Masters, &c. may be turned over.

*Seet. 12.* Provided also, and it is hereby further enacted, That if any Attorney or Solicitor, with and to whom any Person hath been, or shall be bound by Contract in Writing, as aforesaid, to serve as a Clerk for the Term of five Years, or four Years respectively, shall happen to die before the Expiration of the said five Years, or four Years, or if such Contract shall, by mutual Consent of the Parties, be vacated, or in case such Clerk be

be legally discharged by any Rule or Order of the Court, wherein such Attorney or Solicitor shall practise, before the Expiration of the said five Years, or four Years; then, and in any of the said Cases, if such Clerk shall, by Contract in Writing, be obliged to serve, and shall accordingly serve as a Clerk to any other Attorney or Solicitor respectively, who shall be sworn, admitted, and inrolled, as before directed, during the Residue of the said Term of five Years, or four Years respectively, then such Service shall be deemed and taken to be as good and effectual, as if such Clerk had continued to serve as a Clerk for the Term of five Years, or four Years, to the same Person, to whom he was originally bound by Contract in Writing, as aforesaid.\*

Sett.

\* Mr. *Pratt* moved, that the Rule might be made upon one Mr. *Allen*, an Attorney of the Court, to return to Mr. *Hill* all or most Part of the Money he had with him as Clerk, by reason that a great Share of his Business was fell off; so that he had little or nothing to instruct his Clerk in. Judge *Page* said, the proper Rule to make in this Case was, to refer this Matter to the Master to be determined by him; and if he cannot settle it, then to give Leave for an Application to the Court; and to order Mr. *Allen* to attend before him *de Die in Diem*. Judge *Lee* said, that the Court made such a Rule upon a late Application of this Nature. Accordingly the Court made such a Rule in the present Case; Chief Justice absent. *Hill*. 6 Geo. 2. 2 *Barnardist*. K. B. 227.

What Kind of Remedy is proper to be taken, when Disputes arise between Attornies and their Clerks.

Mr. *Kettleby* moved in a Complaint between one *Allen* and his Clerk, that Mr. *Allen* might refund so

Attornies before Admission to take the following Oath.

*Sec. 13.* And it is hereby further enacted by the Authority aforesaid, That every Person who shall, pursuant to this Act, be admitted and inrolled to be an Attorney in the said Courts of King's Bench; Common Pleas, Exchequer, Great Sessions in *Wales*, Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or any inferior Courts of Record, wherein Attornies have been accustomedly admitted and sworn, shall, before he is admitted and inrolled as aforesaid, take and subscribe the Oath following, instead of the Oath heretofore usually taken by the Attornies of such Courts respectively.

**I** A. B. do swear, That I will truly and honestly demean my self in the Practice of an Attorney, according to the best of my Knowledge and Ability.

So help me God.

Solicitors to take the Oath following.

*Sec. 14.* And it is hereby further enacted by the Authority aforesaid, That every Person who shall, pursuant to this Act, be admitted and inrolled to be a Solicitor in the said High Court of Chancery, or in any of the other Courts of Equity aforesaid, shall, before he

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much of the Money as he had received with his Clerk, as the Court should think proper. But the Court said, in these Cases the proper Motion is, to have it referred to the Master, to see what he thinks proper should be refunded: And so they made the same Rule in *Shalve's Case*; which was accordingly done here. *Pasch. 3 Geo. 2. 1730. Anon. 1 Barnardist. K. B. 331.*



shall be so admitted and inrolled, take and subscribe the oath following, viz.

**I** A. B. do swear, That I will truly and honestly demean my self in the Practice of a Solicitor, according to the best of my Knowledge and Ability.

So help me God.

*Seet. 15.* And be it further enacted by the Authority afore said, That from and after the first Day of July in the Year of our Lord one thousand seven hundred and twenty-nine, no Attorney or Solicitor shall have more than two Clerks at one and the same Time, who shall become bound by Contract in Writing, as afore said, after the said first Day of July, to serve him as Clerks.

No Attorney to have more than two Clerks at one Time.

*Seet. 16.* And it is hereby further enacted and declared, That it shall and may be lawful to and for the several Prothonotaries of the Court of Common Pleas at *Westminster*, and the Secondary of the Court of King's Bench, and the several Prothonotaries of the respective Courts of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, and the respective Courts of Great Sessions in *Wales*, to have three Clerks at one and the same Time, and no more; and that such respective Clerks, having served a Clerkship to any of the said Prothonotaries, or Secondary, for any Term not less than five Years, may, after the Expiration of such Term of five Years, be examined, admitted, and inrolled, to be an Attorney of any of the Courts of Law afore said, and for the same Fee, and in the same Manner,

Prothonotaries or Secondary of King's Bench to have three Clerks.

ner, as any other Person may be admitted and inrolled, who shall serve a Clerkship to any sworn Attorney for the space of five Years, in case the Judge or Judges of the Court, before whom such Clerk shall be examined, be upon such Examination satisfied, that he is duly qualified to be admitted an Attorney of such Court; any Thing in this Act contained to the contrary notwithstanding.

After 1 Dec.  
1730. sworn  
Attornies per-  
mitting those  
that are not to  
issue out Writs,  
disabled from  
Practice.

*Sect. 17.* And it is hereby also further enacted by the Authority aforesaid, That from and after the said first Day of *December* one thousand seven hundred and thirty, if any Person, who shall be a sworn Attorney of any of the Courts of Law aforesaid, shall knowingly and willingly permit or suffer any other Person or Persons to sue out any Writ or Process, or to commence, prosecute, follow, or defend any Action or Actions, or other Proceedings in his Name, not being a sworn Attorney of one of the said other Courts of Law, or a sworn Solicitor of the said Court of Chancery, or of some or one of the Courts of Equity aforesaid, and shall be thereof lawfully convicted, every Person so convicted shall, from the Time of such Conviction, be disabled and made incapable to act as an Attorney in any of the Courts of Law aforesaid, and the Admittance of such Person to be an Attorney of any of the said Courts of Law shall from thenceforth cease and be void.

After 1 June  
1729. Attor-  
nies and Soli-  
citors to be in-  
rolled in the  
proper Courts.

*Sect. 18.* And be it enacted by the Authority aforesaid, That from and after the first Day of *June* one thousand seven hundred and twenty-nine, the chief Clerk of the Court of King's Bench, or his Deputy, the Clerk of  
the

the Warrants in the Court of Common Pleas, or his Deputy, the Prothonotaries of the said respective Counties Palatine of *Lancaster*, *Chester*, and *Durham*, and of the Great Sessions in *Wales*, or their respective Deputies, and such Officers of the said inferior Courts of Law, as the Judge or Judges of the said inferior Courts respectively shall for that Purpose appoint, shall, and they are hereby respectively required from Time to Time, without Fee or Reward, to inroll the Name of every Person, who shall be admitted an Attorney in the said respective Courts of Law, pursuant to the Directions in this Act, and the Time when admitted, in an alphabetical Order, in Rolls or Books to be provided and kept for that Purpose in the said several and respective Offices; and also that the senior Clerk of the Petty Bag Office in the Court of Chancery, or his Deputy, the King's Remembrancer of the Court of Exchequer, or his Deputy, the chief Clerk of the Court of the Dutchy Chamber of *Lancaster*, or his Deputy, the Registers of the respective Courts of Equity in the said Counties Palatine, and of the Great Sessions of *Wales*, or their respective Deputies, and such Officers of the inferior Courts of Equity, as the Judge or Judges of such inferior Courts respectively shall for that Purpose appoint, shall, and they are hereby respectively required from Time to Time, without Fee or Reward, to inroll the Name of every Person who shall be admitted a Solicitor in the said respective Courts of Equity, pursuant to the Directions in this Act, and the Time when admitted, in an alphabetical Order, in Rolls or Books to be



be kept for that Purpose in the said respective Offices in the said Courts of Equity; to which Rolls or Books in the said Courts of Law and Equity respectively all Persons shall and may have free Access without Fee or Reward.

Attornies to  
be admitted  
without  
Stamp, if  
sworn before  
1 June 1729.

*Sect. 19.* Provided always, and it is hereby enacted, That the Admission of any Attorney in any of the Courts aforesaid, pursuant to the Directions in this Act, shall and may be written on Parchment without any Stamp impressed thereupon, in case he hath at any Time, on or before the first Day of *June* one thousand seven hundred and twenty-nine, been sworn and admitted an Attorney of any of the said Courts.

A sworn At-  
torney may be  
admitted a  
Solicitor.

*Sect. 20.* Provided also, and it is hereby further enacted, That from and after the first Day of *December* one thousand seven hundred and thirty, any Person, who shall be sworn, admitted, and inrolled to be an Attorney in any of the said Courts of King's Bench, Common Pleas, Exchequer, Counties Palatine of *Chester, Lancaster, and Durham*, and Great Sessions in *Wales*, as herein before directed, may be sworn, admitted, and inrolled to be a Solicitor in all or any of the Courts of Equity aforesaid, without any Fee for the Oath, or any Stamp to be impressed on the Parchment whereon such Admission shall be written, if the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the said other Courts of Equity for the Time being, or any of them respectively shall, upon examining such Attorney touching his Fitness and Capacity to act  
as

as a Solicitor in Courts of Equity, be satisfied that such Attorney is duly qualified to be so admitted.

*Sect. 21.* Provided also, and it is hereby further enacted, That from and after the first Day of *December* one thousand seven hundred and thirty, any Person, who shall be sworn, admitted, and inrolled to be a Solicitor in any of the said Courts of Chancery, Exchequer, Dutchy of *Lancaster*, Counties Palatine of *Chester*, *Lancaster*, and *Durbam*, and Great Sessions in *Wales*, as herein before directed, shall and may be sworn, admitted, and inrolled to be a Solicitor in all or any of the said other Courts of Equity, or in any inferior Court of Equity, without any Fee for the Oath, or any Stamps to be impressed on the Parchment whereon such Admission shall be written, in case the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the said other Courts of Equity for the Time being, or any of them respectively shall, upon examining such Person touching his Fitness and Capacity to act as a Solicitor in Courts of Equity, be satisfied that such Person is duly qualified to be so admitted.\*

A sworn Solicitor in one Court of Equity, may be admitted into any other Court of equity.

*Sect.*

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\* Mr. *Thomas Allen*, an Attorney of the King's Bench, applied in the Treasury to be admitted an Attorney of this Court without Stamps; but upon looking into the Act of Parliament, wherein no Provision is made, for an Attorney of one Court to be admitted an Attorney of another without Duty, though

Attorney of K. B. not to be admitted of Common Pleas without a new Stamp.

The Name of  
the Attorney  
to be written  
on every Writ,  
&c.

*Sect. 22.* And be it further enacted by the Authority aforesaid, That from and after the first Day of *July* one thousand seven hundred and twenty-nine, every Writ and Process for arresting the Body, and every Writ of Execution, or some Label annexed to such Writ or Process, and every Warrant, that shall be made out upon any such Writ, Process, or Execution shall, before the Service or Execution thereof, be subscribed or indorsed with the Name of the Attorney, Clerk in Court, or Solicitor, written in a common legible Hand, by whom such Writ, Process, Execution, or Warrant respectively shall be sued forth; and where such Attorney, Clerk in Court, or Solicitor, shall not be the Person immediately retained or employed by the Plaintiff, in the Action or Suit, then also with the Name of the Attorney or Solicitor so immediately retained or employed, to be subscribed, or indorsed and written in like manner; and that every Copy of any Writ or Process, that shall be served upon any Defendant shall, before the Service thereof, be in like manner subscribed, or indorsed, with the Name of the Attorney or Solicitor, who shall be immediately retained or employed by the Plaintiff in such Writ or Process.

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though there is a Provision for Solicitors of one Court of Equity to be admitted in other Courts of Equity, and for Attornies to be admitted Solicitors without Duty, the Judges refused to admit him without Payment of the Duty. *1 Barnes 30.*

*Sect.*



*Sect. 23.* And be it further enacted by the Authority aforesaid, That from and after the first Day of *July* one thousand seven hundred and twenty-nine, no Attorney, or Solicitor of any of the Courts aforesaid, shall commence or maintain any Action or \* Suit for the Recovery of any Fees, Charges, or Disbursements, at Law, or in Equity, until the Expiration of one Month or more, after such Attorney or Solicitor respectively shall have delivered unto the Party or Parties to be charged therewith, or left for him, her, or them, at his, her, or their Dwelling-House or last Place of Abode, a Bill of such Fees, Charges, and Disbursements, written in a common legible Hand, and in the *English* Tongue (except Law Terms and Names of Writs) and in Words at Length (except Times and Sums) which Bill shall be subscribed with the proper Hand of such Attorney or Solicitor respectively; and upon Application of the Party or Parties chargeable by such Bill, or of any other Person in that Behalf authorized, unto the said Lord High Chancellor, or the Master of the Rolls, or unto any of the Courts aforesaid, or unto a Judge or Baron of any of the said Courts respectively, in which the Business contained in such Bill, or the greatest Part thereof, in Amount or Va-

Attornies, &c.  
not to com-  
mence an Ac-  
tion for Fees  
till one Month  
after Delivery  
of their Bills.

\* The Court, upon reading the Acts of Parliament relating to Attornies and Solicitors, 3 *Jac.* 1. and 2 *Geo.* 2. made a Rule, that Plaintiff should shew Cause why all Proceedings should not be stayed till he delivered Defendant a Bill of Costs. 1 *Barnes* 28.

Judges, &c. to  
refer Bills to  
be taxed, with-  
out Money  
being brought  
into Court,  
&c.

lue, shall have been transacted; and upon the Submission of the said Party or Parties, or such other Person authorized as aforesaid to pay the whole Sum that, upon Taxation of the said Bill, shall appear to be due to the said Attorney or Solicitor respectively, it shall and may be lawful for the said Lord High Chancellor, the said Master of the Rolls, or for any of the Courts aforesaid, or for any Judge or Baron of any of the said Courts respectively, and they are hereby required to refer the said Bill, and the said Attorney's or Solicitor's Demand thereupon, (although no Action or Suit shall be then depending in such Court touching the same) to be taxed and settled by the proper Officer of such Court, without any Money being brought into the said Court for that Purpose; and if the said Attorney or Solicitor, or the Party or Parties chargeable by such Bill respectively, having due Notice, shall refuse or neglect to attend such Taxation, the said Officer may proceed to tax the said Bill *ex parte* (pending which Reference and Taxation no Action shall be commenced or prosecuted touching the said Demand) and, upon the Taxation and Settlement of such Bill and Demand, the said Party or Parties shall forthwith pay to the said Attorney or Solicitor respectively, or to any Person by him authorized to receive the same, that shall be present at the said Taxation, or otherwise unto such other Person or Persons, or in such Manner as the respective Court aforesaid shall direct, the whole Sum that shall be found to be or remain due thereon, which Payment shall be a full Dis-

Discharge of the said Bill and Demand; and in Default thereof the said Party or Parties shall be liable to an Attachment, or Process of Contempt, or to such other Proceedings, at the Election of the said Attorney or Solicitor, as such Party or Parties was or were before liable unto; and if, upon the said Taxation and Settlement, it shall be found that such Attorney or Solicitor shall happen to have been overpaid, then in such Case the said Attorney or Solicitor respectively shall forthwith refund and pay unto the Party or Parties intitled thereunto, or to any Person by him, her, or them authorized to receive the same, if present at the settling thereof, or otherwise unto such other Person or Persons, or in such Manner as the respective Court aforesaid shall direct, all such Money as the said Officer shall certify to have been so overpaid; and in Default thereof the said Attorney or Solicitor respectively shall in like Manner be liable to an Attachment, or Process of Contempt, or to such other Proceedings, at the Election of the said Party or Parties, as he would have been subject unto, if this Act had not been made; and the said respective Courts are hereby authorized to award the Costs of such Taxations to be paid by the Parties, according to the Event of the Taxation of the Bill (that is to say) if the Bill taxed be less by a sixth Part than the Bill delivered, then the Attorney or Solicitor is to pay the Costs of the Taxation; but if it shall not be less, the Court in their Discretion shall charge the Attorney or Client,



in regard to the Reasonableness or Unreasonableness of such Bills.\*

Attornies, &c.  
in their own  
Name suing  
out any Writ,  
&c. not inrol-  
led, forfeit  
50l.

*Sect. 24.* And be it further enacted, That from and after the first Day of *December* one thousand seven hundred and thirty, in Case any Person shall, in his own Name, or in the Name of any other Person, sue out any Writ or Process, or commence, prosecute, or defend, any Action or Suit, or any Proceedings, in any of the Courts of Law or Equity aforesaid, as an Attorney or Solicitor, for, or in Expectation of any Gain, Fee, or Reward, without being admitted and inrolled as aforesaid; every such Person for every such Offence shall forfeit and pay Fifty Pounds to the Use of such Person who shall prosecute him for the said Offence, and is hereby made incapable to maintain or prosecute any Action or Suit in any Court of Law or Equity, for any Fee, Reward, or Disbursements, on account of prosecuting, carrying on, or defending, any such Action, Suit, or Proceeding.

Forfeitures  
how to be re-  
covered.

*Sect. 25.* And be it further enacted by the Authority aforesaid, That the Penalties and Forfeitures, incurred by any Person offending against this Act, may be recovered by Action of Debt, Bill, Complaint, or Information, in any of his Majesty's Courts of Record at *Westminster*, or in any of the Courts of Record of and for the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or in any of the Courts of

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\* This Act doth not extend to any Bill of Fees between one Solicitor and another. See Statute 12 Geo. 2. c. 13. §. 6. herein after inserted.

Great Sessions in *Wales*, for Offences committed within the Jurisdictions of such Courts respectively, or at the Assizes or General Quarter-Sessions of the Peace of the County, Riding, or Division where such Offence shall be committed, by any Person who shall sue for the same within twelve Months after such Offence committed, together with treble Costs of Suit, wherein no Essoign, Protection, or Wager of Law shall be allowed, or any more than one Imparlance; and that no such Bill, Plaint, Suit, or Information, nor any Proceedings thereupon, shall be removed before Judgment, or stayed by any Writ of *Certiorari*, *Habeas Corpus*, or other Writ whatsoever.

*Sect. 26.* Provided nevertheless, and it is hereby further enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to the Examination, Swearing, Admission, or Inrollment of the Six Clerks of the Court of Chancery, or the Sworn Clerks in their Office, or the waiting Clerks belonging to the said Six Clerks, or the Curfitors of the said Court, or of the Clerks of the Petty Bag Office, or of the Clerks of the King's Coroner, and Attorney in the Court of King's Bench, or of the Filazers of the same Court, or of the Filazers of the Court of Common Pleas at *Westminster*, or of the Attornies of the Court of the Dutchy Chamber of *Lancaster*, or of the Attornies of the Court of Exchequer at *Chester*, or of the Attornies of the Courts of the Lord Mayor and Sheriffs of *London* respectively, for the Time being; but that the said Clerks, Filazers,

To what  
Clerks, &c.  
the Act doth  
not extend.

zers, and Attornies respectively, shall and may be examined, sworn, admitted, inrolled, and practise, in their respective Courts and Offices aforesaid, in like manner as they might have been or done, before the making of this Act.

The Attornies  
and Clerks in  
the Exchequer  
herein menti-  
oned, may act  
as heretofore ;

*Seet.* 27. Provided also, and it is hereby further declared and enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to the Examination, Swearing, Admission, or Inrollment, of the Attornies or Clerks of the Offices of the King's Remembrancer, Treasurer's Remembrancer, Pipe, or Office of Pleas in the Court of Exchequer at *Westminster*, for the Time being ; but that the said Attornies and Clerks of the said respective Offices shall and may be approved, sworn, admitted, and practise, in the said Court of Exchequer, or may practise in any other of the Courts of Record before mentioned, in the Name, and with the Consent of some sworn Attorney of such Court ; such Consent to be in Writing, and signed by such Attorney as aforesaid, in like manner as they have usually been, and might have done, before the making of this Act ; any Thing herein contained to the contrary in any wise notwithstanding ; and that it shall and may be lawful, from and after the said first Day of *December* one thousand seven hundred and thirty, for any Person who shall be sworn, admitted and inrolled an Attorney or Solicitor in any of the several Courts before mentioned, according to the Direction of this Act, to practise and solicit in the said respective Offices, in the same Manner as heretofore has been done ; any Thing herein before contained, or  
any



any Law or Statute to the contrary notwithstanding.

*Sect. 28.* Provided also, That this Act, or as also the Solicitors of the Treasury, &c. any Thing herein contained, shall not extend, or be construed to extend, to the Examination, Swearing, Admission, or Inrollment of Persons to be Solicitors of the Treasury, Customs, Excise, Post Office, Salt, or Stamp Duties, or of any other Branches of his Majesty's Revenue, for the Time being, or of the Solicitor of the City of *London*, for the Time being, or of the Assistant to the Council for the Affairs of the Admiralty and Navy; but that such Solicitors and Assistant may be examined, sworn, admitted, and practise in their respective Offices only, as they might have done before the making of this Act.

*Sect. 29.* Provided always, and be it enacted by the Authority aforesaid, That this Act shall continue in Force from the said first Day of *June* one thousand seven hundred and twenty-nine, for the Term of Nine Years, and from thence unto the End of the then next Session of Parliament, and no longer.

*Made perpetual by Statute 30 Geo. 2. c. 19. f. 75.*

By Stat. 5 *Geo. 2. c. 18. f. 2.* No Attorney, Attornies, Solicitor, or Proctor, in any Court whatsoever, shall be capable to continue or be a Justice of the Peace, within any County for that Part of *Great Britain* called *England*, or the Principality of *Wales*, during such Time as he shall continue in the Business and Practice of an Attorney, Solicitor, or Proctor.

Persons admitted Attornies in any Court at Westminster, may practise as such in inferior Courts, if otherwise duly qualified.

By Stat. 6 Geo. 2. c. 27. s. 2. Any Person who hath been, by Virtue of Stat. 2 Geo. 2. c. 23. admitted an Attorney in any of his Majesty's Courts of Record at Westminster, shall and may be capable of being admitted to practise as an Attorney in any inferior Court of Record; provided such Person be in all other Respects capable and qualified to be admitted an Attorney according to the Usage and Custom of such inferior Court.

Stat. 12 Geo. 2. Cap. 23.

The not indorsing the Attorney's Name on Warrants upon Writs, not to vitiate the same.

SECT. 4. AND be it further enacted by the Authority aforesaid, that, from and after the twenty-fourth Day of June in the Year of our Lord one thousand seven hundred and thirty-nine, the not subscribing the Name of the Attorney's Clerk in Court, or Solicitor, on any Warrant that shall be made out upon any Writ, Process, or Execution, shall not vitiate the same; but such Writ, Process and Execution, and all Proceedings thereon, shall be as valid and effectual notwithstanding such Omision, as if the said recited Act for regulating Attornies and Solicitors had not been made; provided the Writ whereon such Warrant is made out be regularly subscribed or indorsed according to the said Act; and every Sheriff or Sheriffs, or other Officer, who shall make out any Warrant upon any Writ, Process, or Execution, and shall not subscribe or indorse the Name of the Attorney, Clerk in Court, or Solicitor, who sued out the same, shall forfeit the Sum of Five Pounds, to be assessed as a Fine

Officers to indorse the Attornies Names upon Writs.

Fine upon such Sheriff or other Officer, by the Courts out of which such Writ, Process, or Execution shall issue; one Moiety thereof to be paid to his Majesty, his Heirs, and Successors; and the other Moiety to the Person or Persons aggrieved by such Omission.

*Seet. 5.* And be it further enacted by the Authority aforesaid, that from and after the said twenty-fourth Day of *June* one thousand seven hundred and thirty-nine, it shall and may be lawful to and for every Attorney, Clerk in Court, and Solicitor, to write his Bill of Fees, Charges, and Disbursements, with such Abbreviations as are now commonly used in the *English* Language; any Thing in any former Law to the contrary notwithstanding.

Attornies, &c.  
may use Ab-  
breviations in  
their Bills.

*Seet. 6.* And be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* one thousand seven hundred and thirty-nine, the said Act of the second Year of his present Majesty, for the better Regulation of Attornies and Solicitors, or any Clause, Matter, or Thing therein contained, shall not extend to any Bill of Fees, Charges, and Disbursements that are now, or shall hereafter become due from any Attorney or Solicitor, to any other Attorney or Solicitor or Clerk in Court; but that every such Attorney, Solicitor, or Clerk in Court, may use such Remedies for the Recovery of his Fees, Charges, and Disbursements against such other Attorney or Solicitor, as he might have done before the Making of the said Act.

Act 2 Geo. 2.  
not to extend  
to any Bill of  
Fees between  
one Solicitor  
and another.



Penalty on  
Persons un-  
qualified  
acting in  
County  
Courts.

*Sect. 7.* And be it further enacted, that in Case any Person shall, from and after the said twenty-fourth Day of *June* one thousand seven hundred and thirty-nine, Commence or defend any Action, or sue out any Writ, Process, or Summons, or carry on any Proceedings in the Court commonly called *The County Court*, holden in any County in that Part of *Great Britain* called *England*, who is not or shall not then be legally admitted an Attorney or Solicitor, according to the said Act made in the second Year of the Reign of his present Majesty; that such Person shall for every such Offence forfeit the Sum of Twenty Pounds, to be recovered with Costs, by any other Person who shall sue for the same within twelve Months next after such Offence shall be committed, in any of his Majesty's Courts of Record.

Quakers to be  
inrolled upon  
their Affir-  
mation.

*Señ. 8.* And be it enacted by the Authority aforesaid, That any Person being one of the People called *Quakers*, who may have served, or shall hereafter serve a Clerkship with an Attorney or Solicitor, and shall be qualified as by the said Act before is required, shall, upon taking his solemn Affirmation instead of the Oaths thereby directed to be taken, before such Judges and others who are hereby authorized and required to administer the said Affirmation, be admitted and inrolled as an Attorney or Solicitor, as if he had taken the said Oaths; any Thing in the said Act to the contrary notwithstanding.

No Attornies,  
&c. to com-  
mence Suits,  
if Prisoners.

*Señ. 9.* And be it further enacted by the Authority aforesaid, That from and after the twenty-fourth Day of *June* one thousand seven hundred

hundred and thirty-nine, no Attorney or Solicitor who shall be a Prisoner in any Gaol or Prison, or within the Limits, Rules, or Liberties of any Gaol or Prison, shall, during his Confinement in any Gaol or Prison, or within the Limits, Rules, or Liberties of any Gaol or Prison, in his own Name, or in the Name of any other Attorney or Solicitor, sue out any Writ or Process, or commence or prosecute any Action or Suit in any Courts of Law or Equity; and that all Proceedings in such Actions or Suits shall be void and of none Effect; and such Attorney or Solicitor so commencing or prosecuting any Action or Suit as aforesaid, shall be struck off the Roll, and incapacitated from acting as an Attorney or Solicitor for the future; and any Attorney or Solicitor permitting or empowering any such Attorney or Solicitor as aforesaid, to commence or prosecute any Action or Suit in his Name, shall be struck off the Roll, and be incapacitated from acting as an Attorney or Solicitor for the future. Penalty.

*Sett.* 10. Provided nevertheless, and it is hereby further enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, or prevent any Attorney or Solicitor so confined as aforesaid, from carrying on or transacting any Suit or Suits commenced before the Confinement of such Attorney or Solicitor as aforesaid; any Thing in this Act contained to the contrary notwithstanding. Proviso.

This

The Statute of  
12 Geo. 2.  
c. 13. disquali-  
fying Attor-  
nies who are  
Prisoners, re-  
lates only to  
prosecuting,  
and not de-  
fending Suits.

This was an Action of Debt on Bond. Defendant craved Oyer and a Copy of the Bond and Condition, and had the same, but without the Witnesses Names, or a Copy of an Agreement subscribed to the Condition. Plaintiff signed Judgment for want of a Plea, and Defendant moved to set the same aside; insisting, that he was intitled to a more perfect Copy, Witnesses Names, &c. the Practice was reported to be, that Defendant was intitled to Oyer of no more than the Bond and Condition, and not the Witnesses Names, &c. But *per Cur'*: That Practice is unreasonable, and must be altered. After a *Profert* of a Deed, it is considered as in Court; and it may be material for the Party's Defence to inspect the same, and take a Copy of the Whole, with Witnesses Names, and all Memorandums subscribed or indorsed, which he has a Right to. Anciently the Witnesses were Parties to the Deed, and were incorporated with the Jury to try the Deed. Let the Judgment be set aside, without Costs. Let Defendant have a compleat Oyer, and a Copy of the Deed and Witnesses, &c. and plead an issuable Plea. It was objected, that *Milton*, Defendant's Attorney, who signed the Notice of Motion, was a Prisoner in the *Fleet*, and consequently the Notice, &c. void. But *per Cur'*: The late Act of Parliament disqualifying Attornies who are Prisoners from practising, relates only to prosecuting, and not to defending Suits. *Wynne* for Defendant; *Skinner* for Plaintiff. 2 *Barnes* 200.



*Edward Owen*, Plaintiff's Attorney, now a Prisoner in the Fleet, under Process of Contempt from the Court of Chancery, having commenced this Action on the Bail-Bond, assigned since his Imprisonment, Defendants moved to set aside the Proceedings, with Costs, as contrary to the Statute 12 Geo. 2. c. 13. making void the same; and obtained a Rule to shew Cause: But it appearing that the original Action was commenced before *Owen's* Imprisonment, and there being an Exception in the Statute as to carrying on Proceedings before commenced; the Court taking this under the Statute for Amendment of the Law, 4 & 5 Q. Anne, to be a Continuance of the original Suit incorporated to make it effectual, discharged the Rule. *Willes* for Plaintiff and *Owen*; *Wynne* for Defendant. 2 Barnes 41.

Attorney, Prisoner, commencing an Action on a Bail-Bond assigned after his Imprisonment, in an Action begun before it, not within Statute 12 Geo. 2. c. 13. it being a Continuance of a former Suit, &c.

## Stat. 22 Geo. 2. Cap. 46.

Sect. 3. **A**ND for the better preventing unqualified Persons from being admitted Attornies and Solicitors, and for rendering the said Act more effectual for the Purposes thereby intended; Be it enacted by the Authority aforesaid, That every Person who shall, from and after the first Day of July one thousand seven hundred and forty nine, be bound by Contract in Writing to serve as a Clerk to any Attorney or Solicitor, as by the said Act is directed, shall, within three Months next after the Date of every such Contract, cause an Affidavit to be made and duly sworn, of the actual Execution of every such Contract, by

Persons bound to serve as Clerks to Attornies, to cause Affidavit to be made within three Months of the Execution of such Contract, &c.

**Affidavit to  
be filed.**

by every such Attorney or Solicitor, and the Person so to be bound to serve as a Clerk as aforesaid; and in every such Affidavit shall be specified the Names of every such Attorney and Solicitor, and of every such Person so bound; and their Places of Abode respectively, together with the Day of the Date of such Contract; and every such Affidavit shall be filed within the Time aforesaid, in the Court where the Attorney or Solicitor to whom every such Person respectively shall be bound as aforesaid, hath been inrolled as an Attorney or Solicitor, with the respective Officer or Officers, or his or their respective Deputy or Deputies, in the respective Courts herein after-mentioned, who shall make and sign a Memorandum or Mark of the Day of filing every such Affidavit, at the Back or at the Bottom thereof.

**None to be  
admitted be-  
fore such Affi-  
davit be pro-  
duced.**

*Sect. 4.* And be it further enacted, That no Person who shall, after the said first of July, become bound as aforesaid, shall be admitted or inrolled an Attorney or Solicitor in any Court in the said Act mentioned, before such Affidavit, so marked by the proper Officer as aforesaid, shall be produced and openly read in such Court, where such Person shall be admitted and inrolled an Attorney or Solicitor.

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\* In the Act passed every Session for indemnifying such as have omitted to qualify themselves for Offices, &c. there is usually a Clause for giving further Time for making and filing of Affidavits of Articles of Clerkship.

*Sect.*

*Sect. 5.* And it is hereby enacted and declared, That the several Persons following shall be deemed and taken to be the proper Officers for filing such Affidavits in the respective Courts herein after mentioned (that is to say) in the High Court of *Chancery*, the senior Clerk of the Petty Bag Office, or his Deputy; in the Court of *King's Bench*, the chief Clerk of that Court, or his Deputy; in the Court of *Common Pleas*, the Clerk of the Warrants of that Court, or his Deputy; in the Court of *Exchequer*, the King's Remembrancer of that Court, or his Deputy; in the Court of the Dutchy Chamber of *Lancaster* at *Westminster*, the chief Clerk of that Court, or his Deputy; and in the several Counties Palatine of *Chester*, *Lancaster*, and *Durham*, the respective Prothonotaries of the said Counties Palatine, and their respective Deputies; and in the several Courts of the Great Sessions of *Wales*, the respective Prothonotaries of the said Courts, and their respective Deputies.

*Sect. 6.* And be it further enacted, That every such Officer or Officers, or their respective Deputy or Deputies, filing such Affidavit as aforesaid, shall keep a Book, wherein shall be entered the Substance of such Affidavit, specifying the Names and Places of Abode of every such Attorney or Solicitor, and Clerk or Person bound as aforesaid, and of the Person making such Affidavit, with the Date of the Articles or Contract in such Affidavit to be mentioned, and the Days of serving and filing every such Affidavit respectively; and every such Officer or Officers, or his or their Deputy or Deputies, shall be at Liberty to take, at

Officers who  
are to file such  
Affidavits.

Book to be  
kept for enter-  
ing the Names  
and Place of  
Abode of  
every such  
Attorney and  
Clerk, &c.

Fees for filing  
Affidavits.



Time of filing every such Affidavit, the Sum of Two Shillings and Sixpence, and no more, as a Recompence for his Trouble in filing such Affidavits, and preparing and keeping such Books as aforesaid, and which said Books shall and may be searched in Office Hours, by any Person or Persons whatsoever, without Fee or Reward.

No Attorney to take, &c. after discontinuing Business.

*Sect. 7.* And be it further enacted, That from and after the said first Day of July, no Attorney or Solicitor shall take, have, or retain any Clerk, who shall become bound by Contract in Writing as aforesaid, after such Attorney or Solicitor shall have discontinued or left off, or during such Time as he shall not actually practice as, or carry on the Business of an Attorney or Solicitor.

Clerks to be employed in their proper Business during the Time of their Contract.

*Sect. 8.* And be it further enacted, That every Person who shall, from and after the said first Day of July, become bound, by Contract in Writing, to serve any Attorney or Solicitor, as by the said Act is directed, shall, during the whole Time and Term of Service, to be specified in such Contract, continue and be actually employed by such Attorney or Solicitor, or his or their Agent or Agents, in the proper Business, Practice, or Employment of an Attorney or Solicitor.

Upon Affidavit of the Execution of second Contracts by such Clerks.

*Sect. 9.* Provided always, and it is hereby enacted, If any such Attorney or Solicitor, to or with whom any such Person shall be bound, shall happen to die before the Expiration of such Term, or shall discontinue or leave off such his Practice as aforesaid, or if such Contract shall by mutual Consent of the Parties be cancelled, or in Case such Clerk shall be legally

legally discharged by any Rule or Order of the Court wherein such Attorney or Solicitor shall practise, before the Expiration of such Term, and such Clerk shall in any of the said Cases be bound by another Contract; or other Contracts in Writing to serve, and shall accordingly serve in Manner herein before-mentioned as Clerk to any other such Practising Attorney or Attornies, Solicitor or Solicitors as aforesaid respectively, during the Residue of the said Term of five Years; then such Service shall be deemed and taken to be as good, effectual, and available, as if such Clerk had continued to serve as a Clerk for the said Term; to the same Person to whom he was originally bound, so as an Affidavit be duly made and filed of the Execution of such second or other Contract or Contracts, within the Time and in like manner as is before directed concerning such original Contract.

*Sec. 10.* And be it further enacted, That every Person who, from and after the said first Day of July, shall become bound as a Clerk as aforesaid, shall, before he be admitted an Attorney or Solicitor according to the said Act, cause an Affidavit of himself, or such Attorney or Solicitor to whom he was bound as aforesaid, to be duly made and filed with the proper Officer herein before for that Purpose appointed, that he hath actually and really served and been employed by such Practising Attorney or Attornies, Solicitor or Solicitors, to whom he was bound as aforesaid, or his or their Agent or Agents, during the said whole Term of five Years, according to the true Intent and Meaning of this Act.

Clerks, before admitted to make Affidavit of having served five Years.

*Stat. 11.* And whereas divers Persons who are not examined, sworn, or admitted to act as Attornies or Solicitors in any Court of Law or Equity, do, in Conjunction with, or by the Assistance or Connivance of certain Sworn Attornies and Solicitors, and by various subtle Contrivances, intrude themselves into, and act and practise in the Office and Business of Attornies and Solicitors, to the great Prejudice and Loss of many of his Majesty's Subjects, and the Scandal of the Profession of the Law;

Sworn Attornies acting as Agents for Persons not qualified, &c. to be struck off the Roll, and to be committed.

Be it therefore enacted, That from and after the twenty-ninth Day of *September*, which shall be in the Year of our Lord one thousand seven hundred and forty-nine, if any sworn Attorney or Solicitor shall act as Agent for any Person or Persons, not duly qualified to act as an Attorney or Solicitor as aforesaid, or permit or suffer his Name to be any ways made use of upon the Account, or for the Profit of any unqualified Person or Persons, or send any Process to such unqualified Person or Persons, thereby to enable him or them to appear, act, or practise in any Respect as an Attorney or Solicitor, knowing him not to be duly qualified as aforesaid, and Complaint shall be made thereof in a summary Way to the Court from whence any such Process did issue; and Proof made thereof, upon Oath, to the Satisfaction of the Court, that such sworn Attorney or Solicitor hath offended therein as aforesaid; then, and in such Case, every such Attorney or Solicitor so offending shall be struck off the Roll, and for ever after disabled from practising as an Attorney or Solicitor; and in that Case, and upon such Complaint and Proof made as aforesaid, it shall and may be lawful to and for



for the said Court, to commit such unqualified Person, so acting or practising as aforesaid, to the Prison of the said Court, for any Time not exceeding one Year.

*Stat. 12.* And whereas frequent Delays, Inconveniences, and unnecessary Expences arise and happen, as well to Parishes as private Persons, by the Mismanagement and Unskillfulness of Persons employed as Solicitors or Agents at the Sessions, held for the several Counties, Ridings, Divisions, Cities, Towns Corporate, and other Places of this Kingdom, who having never been regularly bred to the Law, and being ignorant of the Forms and Operations thereof, Offenders against the Laws of the Land have frequently escaped with Impunity: For remedying therefore of these In-

conveniences, Be it enacted by the Authority aforesaid, That from and after the twentieth Day of September, which shall be in the Year of our Lord one thousand seven hundred and forty-nine, no Person whatsoever shall act as a Solicitor, Attorney, or Agent, or sue out any Process at any General or Quarter Sessions of the Peace for any County, Riding, Division, City, Town Corporate, or other Place within this Kingdom, either with Respect to Matters of a criminal or civil Nature, unless such Person shall have been heretofore admitted an Attorney of one of his Majesty's Courts of Record at *Westminster*, and duly inrolled, pursuant to an Act made in the second Year of his present Majesty's Reign (intituled, An Act for the better Regulation of Attornies and Solicitors) or unless such Person shall hereafter be admitted an Attorney, and inrolled as

None to act  
as Attornies  
at Sessions  
who were not  
admitted according to  
2 Geo. 2.  
c. 23.

Penalty 50l.

With treble  
Costs.

Attornies suf-  
fering Persons  
not admitted  
to use their  
Names, to  
forfeit 50l.

Persons ex-  
cepted.

No Clerk of  
the Peace,  
Under Sheriff,  
&c. to act as  
Attornies, &c.  
at Quarter Ses-  
sions for the  
County, &c.

aforesaid by Virtue of this Act, or such other Law as shall be then in Being, and unless such Person shall continue so entered upon the Roll at the Time of such his acting in the Capacity aforesaid; but all and every Person or Persons respectively, who shall so act, not being admitted and inrolled as aforesaid, shall be subject and liable to a Penalty of Fifty Pounds; to be recovered by Action of Debt, Bill, Complaint, or Information, in any of the Courts of Record at *Westminster*, by any Person or Persons who shall sue for the same within twelve Months after the Offence committed, with treble Costs of Suit; and if any Attorney or Attornies shall permit and suffer any Person or Persons whatsoever, not being admitted and inrolled as aforesaid, to make use of his or their Name or Names respectively, in the Courts of General or Quarter Sessions aforesaid, such Attorney or Attornies respectively shall be subject and liable to a like Penalty of Fifty Pounds, to be recovered in Manner aforesaid.

*Sect. 13.* Provided always, That nothing herein contained shall extend, or be construed to extend, to deprive the Attornies of the Dutchy of *Lancaster*, or of the Courts of Great Sessions in *Wales*, or of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, from acting within their respective Jurisdictions.

*Sect. 14.* And, to the end that Justice may be impartially administered in the several General or Quarter Sessions of this Kingdom, Be it further enacted by the Authority aforesaid, That no Clerk of the Peace, or his Deputy.

nor

nor any Under-Sheriff or his Deputy, shall, from and after the said twenty-ninth Day of *September*, act as a Solicitor, Attorney, or Agent, or sue out any Process, at any General or Quarter Sessions of the Peace to be held for such County, Riding, Division, City, Town Corporate, or other Place within this Kingdom, where he shall execute the Office of Clerk of the Peace, or Deputy Clerk of the Peace, Under-Sheriff or Deputy, on any Pretence whatsoever; but if any Clerk of the Peace or his Deputy, or any Under-Sheriff or his Deputy, shall presume to act as a Solicitor, Attorney, or Agent as aforesaid, such Clerk of the Peace or his Deputy, Under-Sheriff or his Deputy respectively, shall be subject and liable to a like Penalty of Fifty Pounds, to be recovered in Manner aforesaid.

*Sect. 15.* And whereas several Persons have been bound by Articles in Writing to Attornies of one of his Majesty's Courts at *Westminster*, to serve them as their Clerks for the Term of five Years, which Attornies have died before the Expiration of the said five Years, and after their Deaths such Persons so bound have served the Remainder of the said Term with some other Attornies of the said Courts, but have neglected to enter into Articles with the said other Attornies for the Remainder of the Term of five Years; and therefore Doubts have arisen, whether such Persons could be admitted Attornies of any of his Majesty's Courts, by Reason that such Service was not strictly in Pursuance of the Direction of the before-mentioned Act; Be it therefore enacted and



Clerks whose Masters have died serving the Residue of their Time with others without fresh Contracts, to be admitted.

declared by the Authority aforesaid, That all such Persons who shall have been so bound as aforesaid for the Term of five Years to Attornies of any of his Majesty's Courts at *Westminster*, which said Attornies shall have died before the Determination of the said Term, if such Persons shall afterwards, and before the twenty-fifth Day of *March* one thousand seven hundred and forty-nine, have served the Residue of the said Term of five Years with other Attornies of one of his Majesty's said Courts, though without entering into any Articles; such Persons having so served during the Term of five Years, shall and may be admitted Attornies in any of his Majesty's Courts at *Westminster*; any Thing in the said Act, or in this present Act contained to the contrary in any wise notwithstanding.

Persons admitted Sworn Clerks in the Office of the Six Clerks, or bound for five Years, &c. may be admitted Solicitors.

*Sec. 16.* And be it further enacted by the Authority aforesaid, That any Person who shall have been admitted a sworn Clerk in the Office of the Six Clerks of the Court of *Chancery*, or shall have been bound by Contract in Writing, to serve as a Clerk for and during the Space of five Years, to a sworn Clerk in the said Office, and for and during the said Term of five Years shall have continued in such Service, or shall have continued in such Service for the Space of three Years or more, and shall have been admitted a Writing Clerk, and acted as such during the Residue of the said Term of five Years; may be examined, sworn, admitted, and inrolled as a Solicitor, in the same Manner as Solicitors in Courts of Equity are by the said Act required to be examined, sworn, admitted, and inrolled; any

Thing in the said Act to the contrary notwithstanding.

*Seet.* 17. Provided also, and it is hereby further enacted, That if any Sworn Clerk in the said Six Clerks Office, with and to whom any Person hath been, or shall be bound by Contract in Writing as aforesaid, to serve as a Clerk for the Term of five Years, shall happen to die before the Expiration of the said Term of five Years; or if such Contract shall, by mutual Consent of the Parties, be vacated; or in case such Clerk be legally discharged by any Rule or Order of the said Court of *Chancery*, before the Expiration of the said Term of five Years; then, and in any of the said Cases, if such Clerk shall by Contract in Writing be obliged to serve, and shall accordingly serve as a Clerk to any other Sworn Clerk in the said Six Clerks Office, or to any Solicitor who shall be sworn, admitted, and inrolled, pursuant to the said Act of the second Year of his present Majesty, during the Residue of the said Term of five Years; then such Service shall be deemed and taken to be as good and effectual as if such Clerk had continued to serve as a Clerk for the Term of five Years to the same Person to whom he was originally bound by Contract in Writing as aforesaid.

*Seet.* 18. Provided always, and it is hereby further enacted by the Authority aforesaid, That no Sworn Clerk in the said Six Clerks Office shall have more than two Clerks at one and the same Time, including the Clerk who shall be entered on the Roll kept by the Master of the Rolls, or his Secretary, for that Purpose.

Clerks who Masters have died, &c. entering into fresh Contracts, and serving the Residue of their Time, the same to be effectual.

No Sworn Clerk to have more than two Clerks.

Persons ex-  
cepted.

*Seet.* 19. Provided also, and it is hereby further declared and enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend to the Taking or Binding, Examination, Swearing, Admission, or Inrollment of the Attornies, or Clerks of the Offices of the King's Remembrancer, Treasurer's Remembrancer, Fine, or Office of Pleas, in the Court of *Exchequer* at *Westminster* for the Time being, but that the said Attornies and Clerks of the said respective Offices shall and may be taken, bound, approved, sworn, admitted, and practise in the said Court of *Exchequer*, in like manner as they usually have been, and might have done before the making of this Act, and may practise in any other of the Courts of Record before-mentioned in the same, and with the Consent of some Sworn Attorney of such Court, such Consent being in Writing, and signed by such Attorney as aforesaid, in the Manner as they have usually been and might have done before the making of this Act; any Thing herein contained to the contrary notwithstanding.

Stat. 23 Geo. 2. Chap. 26.

2 Geo. 2. c.  
23. §. 20.

*Seet.* 15. **A**ND whereas by an Act of Parliament made and passed in the second Year of the Reign of his present Majesty, (intituled, An Act for the better Regulation of Attornies and Solicitors) it was enacted, That from and after the first Day of *December* one thousand seven hundred and thirty,



thirty, any Person who should be sworn, admitted, and inrolled to be an Attorney in any of his Majesty's Courts of King's Bench, Common Pleas, Exchequer, Counties Palatine of *Chester*, *Lancaster*, and *Durham*, and Great Sessions in *Wales*, as is therein directed, might be sworn, admitted, and inrolled to be a Solicitor in all or any of the Courts of Equity in the said Act specified, without any Fee for the Oath, or any Stamp to be impressed on the Parchment, whereon such Admission should be written, if the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the other Courts of Equity, in the said Act mentioned, for the Time being, or any of them respectively, should, upon examining such Attorney touching his Fitness and Capacity to act as a Solicitor in Courts of Equity, be satisfied that such Attorney is duly qualified to be so admitted; but there being no Provision made in the said in Part recited Act, for admitting Persons (who had been, or shall be sworn, admitted, and inrolled Solicitors of any of the Courts of Equity in the said Act mentioned) Attornies of any of his Majesty's Courts of Law therein mentioned, although such Solicitor should be duly qualified in all other Respects; Wherefore, and to supply such Omission, Be it enacted by the Authority afore said, That from and after the second Day of *May* one thousand seven hundred and fifty, any Person who hath been already, or who at any Time or Times hereafter shall be sworn, admitted, and inrolled a Solicitor in any

Solicitors in the Courts of Equity may be admitted Attornies without Fees.

of

of his Majesty's Courts of Equity at *Westminster*, in such Manner as by the said Act is directed, may be sworn, admitted, and inrolled to be an Attorney of his Majesty's Courts of King's Bench or Common Pleas at *Westminster*, without any Fee for the Oath, or any Stamp to be impressed on the Parchment whereon such Admission shall be written (his having been sworn, admitted, and inrolled a Solicitor in any of the Courts of Equity afore-mentioned notwithstanding) if the Judges of the said Courts of King's Bench or Common Pleas for the Time being, or any of them respectively, shall, upon examining such Solicitor, touching his Fitness and Capacity to act as an Attorney in the said respective Courts, be satisfied that such Solicitor is duly qualified to be sworn, admitted, and inrolled an Attorney, pursuant to the said in Part recited Act, and other the Laws now in Force concerning Attornies and Solicitors.

How far a  
Writ shall not  
be said to be  
duly marked  
with the Name  
of the Plain-  
tiff's Attorney  
according to  
the Intent of  
2 Geo. 2. c.  
23. s. 22.  
See Page 32.

Mr. *Filmer* moved, that the Defendant's Bail might be discharged, and the Process, on which he was taken, set aside, for not being marked with the Name of the Attorney, as the late Act requires, which was made 2 Geo. 2. he did agree that it was marked with the Name of the Person whom the Attorney employed to manage this Cause for him; but Judge *Lee* said, that this Person could at most be considered only as a Solicitor in the Cause; and the Act requires, that the Writ should be marked with the Name of the Attorney or Solicitor. Accordingly the Court made a Rule

Rule to shew Cause. *Mich. 5 Geo. 2. Cor-  
tesses and Munes, 2 Barnardist. 79.*

Afterwards in the same Term Mr. Fazakerly came to shew Cause, and said, that the Fact was, that the Plaintiff had employed one *Cunningham* as his Attorney to sue the Defendant in the Common Pleas, which *Cunningham* accordingly did; but afterwards advised the Plaintiff to discontinue that Action, and bring one in this Court, to prevent the Defendant's being able to keep the Plaintiff out of his Money by Writs of Error, longer than he could do if the Action was in this Court. At the same Time Mr. *Cunningham* told the Plaintiff, that he was only Attorney in the Common Pleas, and therefore the Plaintiff must employ some Attorney in this Court: Accordingly the Plaintiff desired Mr. *Cunningham* to employ whom he would for him, which Mr. *Cunningham* did, and afterwards wrote the Plaintiff Word, that he had employed Mr. *Stone* for him. Upon this State of the Case, Mr. *Fazakerly* said, he submitted it, that Mr. *Stone* was to be considered as the Plaintiff's Attorney in this Court, and not Mr. *Cunningham*. And if so, the Writ was rightly marked with the Name of Mr. *Stone*. The Court was of the same Opinion; and accordingly discharged the Rule. *2 Barnardist. 83.*

An Attorney sworn and admitted in any of the Courts at *Westminster*, may practise in any inferior Court, unless such Court by Charter or Prescription is restrained to a certain Number of Attornies, and hath a Power to exclude all others.

If

*1 Vent. 11.  
1 Sid. 410.  
1 Mod. 23.*





## C H A P. III.

*Of retaining an Attorney; where Appearance is good, and where not; and of the Warrant of Attorney.*

**A**N Attorney is not compellable to appear 1 Salk. 87. for any one, unless he take his Fee, or back the Warrant; after which, the Court will compel him to appear.

An Attorney, on Sight of a Writ against 6 Mod. 86. Husband and Wife, undertook to appear for them, but after would not do it. A Declaration was delivered, which he received *de bene esse*, and Judgment was entered for Want of a Plea; and the Court set it aside for Irregularity, but ordered the Attorney to be laid by the Heels; and it was said, that if an Attorney undertakes to appear and after will not do it, upon a Summons before a Judge, he shall be compelled to it.

An Action was brought against Baron and 1 Brownl. 46. Feme, and an Attorney appeared for the Husband alone; and the Court held, it was the Appearance of *Baron and Feme* in Law.

If before a Writ be taken out, an Attorney 6 Mod. 42. promise to appear to it, and afterwards it is Per Holt, Ch. taken out and shewed to him, he ought to Just. appear, but that is no actual Appearance; but if such Undertaking be after a Writ is actually taken out, it is an Appearance.

An Administrator must give Bond to the Comb. 299. Sheriff of Penalty of 40*l.* for his Appearance in B. R. at the Return of the Writ; and the Sheriff

is

is not obliged to discharge him upon the Attorney's Promise to appear; but if an Attorney of this Court or of the Common Pleas do make such Promise, the Court will compel him to perform it.

1 Salk. 86.

Said to be the Practice of the Court.

Where an Attorney takes upon him to appear, the Court looks no farther, but proceeds as if the Attorney had sufficient Authority, and leaves the Party to his Action against him.

1 Salk. 88.

6 Mod. 16.  
B. R.

If an Attorney appears, and Judgment is entred against his Client, the Court will not set aside the Judgment, though the Attorney had no Warrant, if the Attorney be able and responsible; for the Judgment is regular, and the Plaintiff is not to suffer when in no Default; but if the Attorney be not responsible or suspicious, the Judgment will be set aside; for otherwise the Defendant has no Remedy, and any one may be undone by that Means.

Comb. 2.

Attachment denied by the Court against an Attorney, who appeared for the Plaintiff without Warrant; but said, an Action on the Case lies.

5 Mod. 205.

An Action was brought against *Squire* an Attorney, and two others, for appearing for the Plaintiff without a Warrant: The Cause was carried down to be tried at the Assizes; and the Defendant did promise, that in Consideration the Plaintiff would not prosecute the Action, that he would pay 10*l.* and Costs of Suit; and now an Action was brought against the Defendant upon this Promise.

The Question was, Whether this was a void Promise by the Statute of Frauds, being made in Behalf of another, and not in Writing? Which Statute enacts, *That no Action shall be brought*



*brought to charge the Defendant upon any special Promise to answer for the Debt, Default, or Mis carriage of another Person, unless it be in Writing.*

But the Court were of Opinion, that this cannot be said to be a Promise for another Person, but for his own Debt, and therefore not within this Statute.

In a *Quid Juris clamat*, the Defendant upon Dyer 126. a Suggestion that he was old and weak, had a *Dedimus* directed to the Chief Justice to make an Attorney; and accordingly the Appearance by Attorney was held good.

In *Audita Querela*, a Writ was awarded out Dyer 297. of the Common Pleas against the Defendant *ad respondendum*; to which Writ he appeared by Attorney, and held good.

*Husband and Wife* Tenants in Tail, Re- Dyer 89. b. mainder to the right Heirs of the Husband; they had Issue a Daughter, and the Husband died; afterwards the Wife sold the Lands in Fee, and the Daughter and her Husband joined in a Fine to confirm the Sale to the Purchaser; the Daughter died without Issue; a Writ of Error was brought to reverse this Fine, and the Wife who sold the Estate, and the Husband of the Daughter who joined in the Fine, appeared by Attorney and joined *gratis* with the Plaintiff in Error, and their Appearance by Attorney was held good.

Error in Debt, &c. and Error assigned was, that 2 Cro. 521. the Defendant appeared by G. D. *his Attorney*, and there was a Judgment against him by Default; but that the said G. D. *was not an Attorney of the Court* at the Time of his Appearance, nor at any Time in that Term when the Judgment

Judgment was entered; the Defendant pleaded *in nullo est Erratum*, and because it was plain that the Defendant had only appeared by the said G. D. but had *imparled* to another Term; so that the Court had admitted him to be an Attorney, 'tis now against the Record to say he was none, for that doth implicitly admit he was an Attorney.

A Corporation aggregate of many Persons, cannot appear in Person, but by Attorney, and such Appearance is good. 10 Rep. 32. in the Case of *Sutton's Hospital*.

1 Salk. 88.

An Attorney appeared *without any Warrant*, and Judgment was had against the Client; and upon a Motion to set aside the Judgment, it was ruled, that the Judgment shall stand, *if the Attorney is responsible*, because 'tis regular, and there is no Default in the Plaintiff; but if the Attorney is not *responsible*, it shall be set aside; for otherwise the Defendant hath no Remedy, and may be undone.

1 Salk. 89.

The Plaintiff had a Verdict in C. B. in an Action of Trespass, and his Attorney entered *Remittit Damna*, as to Part, and had Judgment for the rest; adjudged, that by the making him Attorney, he had Power to remit the Damages, for that need not be *in propria Persona*, as a *Retraxit* must be.

8 Rep. Beecher's Case.

Debt upon Bond; the Defendant pleaded Payment at the Day upon which they were at Issue, and it was found for the Plaintiff; afterwards the Plaintiff by his Attorney came into Court, and *fatetur se in Curia hic ulterius nolle prosecute*; upon which, Judgment was given, that the Defendant *eat inde sine Die, &c.* and upon a Writ of Error brought, the Judgment

was

was reversed, because a *Retraxit* cannot be *per Attornatum*; for it being in Nature of a Release, it must be done by the Plaintiff himself in Person.

*Homage and Fealty* are Things inseparably annexed to the Person, and therefore cannot be done by Attorney.

J. S. had a Warrant to appear for the Defendant, and afterwards there was Judgment against him; and upon a *Scire facias* against the Bail, the Defendant still appeared by his old Attorney, who acted as such thro' the whole Cause, and Execution was awarded against the Bail; and now, upon a Writ of Error brought, the Record of the principal Judgment being certified, it was adjudged, that as soon as the *Scire facias* was returned, then the Plea began, and then a new Warrant of Attorney ought to have been entered thus; (viz.) That the Plaintiff *ponit loco suo*, &c. for the Warrant to appear in the principal Action, is no Warrant to appear in the *Scire facias* against the Bail, because 'tis a new Cause, and a different Record.

The Bailiff, who had a Writ against the Defendant, came to Mr. Stapleton an Attorney, and told him the Defendant desired he would back the Writ, and appear for him, and afterwards upon the Plaintiff's Attorney's applying to him, he told him he had sent Orders to his Agent to appear, and he believed he had done it. Whereupon the Plaintiff's Attorney delivered a Declaration, and signed Judgment for want of a Plea. Upon Motion to set it aside, it appeared the Bailiff went of his own Accord to Mr. Stapleton, without the

1 Salk. 89;

Where an Attorney undertakes to appear, the Court will oblige him to do it in all Events.



Direction of the Defendant, and that Mr. *Stapleton* discovering this, had countermanded the Orders for appearing, and that in Fact there was no Appearance. But the Court refused to set it aside, and said they would oblige Mr. *Stapleton* to file common Bail according to his Undertaking, in order to make the Proceedings regular, there being no Fault in the Plaintiff's Attorney. *Strange* 693.

Where two join in a Writ of Error, and one will not assign Errors, the Court will give the other Time to summon and sever. *Strange* 783.

A Writ of Error was brought by two Executors of a Judgment against them, *ad grave Damnum* of both. A *Scire facias* was taken out, and a *Scire feci* returned. And then one of the Plaintiffs in Error moved for Time to assign Errors, till there could be a Summons and Severance of the other; upon an Affidavit that the other Executor was in the Interest of the Defendant in Error, and would not join, and Time was given accordingly; and afterwards upon Argument, the Case appeared to be thus:

Where there are two Executors and one under Age, they may sue, but cannot be sued by Attorney.

Error of a Judgment in C. B. in Case upon several Promises against two Executors, on a Promise by their Testator; they plead *Quod ipsi non assumpserunt*; to which the Plaintiff demurs, and for Want of a Joinder there is Judgment by Default; upon which a Writ of Inquiry issues, and Damages are assessed, with Costs; then there is a Judgment for the Damages *de bonis Testatoris*; and as to the Costs, *de bonis Propriis*, they are remitted. Upon Error in B. R. one Executor only appears, and prays Summons and Severance of the other; upon which there is a Judgment *Quod sequatur solus*, and then he assigns for Error, that he was an Infant,

Infant, and has appeared by Attorney; and *in nullo est Erratum* is pleaded.

Mich. 13 Geo. 1. *Reeve pro quer' in Errore* argued, that *in nullo est Erratum* had admitted the Infancy, and therefore it was to be taken up as a Point of Law. I agree, if Executors were Plaintiffs, he of full Age might make an Attorney for both; but the Distinction has always been, that where they are Defendants, he cannot; for there if he mispleads, there are Coſts *de bonis Propriis*, for which he muſt have an Action againſt his Guardian, which he cannot have againſt an Attorney; whereas when he is Plaintiff, he pays no Coſts. 2 Cro. 420, 44. 1 Roll. Abr. 247.

Executors are conſidered as diſtinct Perſons, and therefore may ſever in their Pleas. 1 Roll. Abr. 229. And ſo it was done in the Caſe of *Bladwin v. Church*, Hil. 2 Geo. in B. R. The being joined with another of full Age ſignifies nothing; for this is a perſonal Privilege. 2 Saund. 212. 1 Lev. 299. Sti. 318.

*Strange contra.* In Reason there is no Difference between being Plaintiff or Defendant; as he pays Coſts if a Defendant, he is amerced *pro falſo Clamore* if a Plaintiff; if a Plaintiff, he may be barred of his Demand, as well as have a final Judgment againſt him where he is Defendant. Where there are two Executors, they make but one Representative of the Teſtator, and the Suit is *in auter droit*. Cro. El. 541. An Infant ſole Executor ſued by Attorney, and held well, and the Judgment affirmed. Show. 169. Two avow as Bailiffs, F 2 and

and one being of Age, it was held, that he might make an Attorney for both; and *Holt* C. J. said, it would be the same with the two Executors, where one might make an Attorney for both, as well as dispose of the whole Estate. There is a Necessity (says he) for all to join, and therefore one Attorney shall serve for all.

But whatever might be the Law in other Cases, where the Infant Defendant is charged with Costs; yet he can suffer no Damages here, because the Costs are remitted. 1 *Roll. Abr.* 784. pl. 5, 6. 1 *Co.* 162. 8 *Co.* 35.

*Reeve* replied, The Case in *Cre. El.* 541. is denied in 2 *Cre.* 420. and as to the Case in *Shower*, it is within my Admittance, for Avowants are in the Nature of Plaintiffs.

C. J. This Case requires great Consideration. No Case has been cited to make this good, where the Infant is Defendant; but the Case in *Stiles* is in Point to make it bad. Where they are Plaintiffs, it is not to be doubted but all might appear by Attorney. One Executor, it is true, may make an absolute Disposition of any Part of the Estate, but then it will be a *Devastavit* in him only; whereas if they are Defendants, and do not make a good Defence, it is a *Devastavit* in all. Here it appears, a good Defence was not made; for the Attorney has pleaded a Plea which could never bring the Merits in Question; and this being an Action on Simple Contract, he may be prejudiced by not pleading Debts upon Specialty.

*Fortescue* J. I think this Case stands upon a different Foot, from the Case of an Infant sole Executor; for if one Executor can dispose of the Estate in Spite of the other, why may not he



he do an Act of a less Nature, in appointing an Attorney for both, which is only giving a bare Authority. Executors are but one Person in the Eye of the Law; and it is absurd to say, the Executor is of full Age and under Age at the same Time. There is no Reason given for the Opinion in *Stiles*, and the Cases in *Shower* and 2 *Saund.* are since: And if there be no real Difference between being Plaintiffs and Defendants, (as I think there is not) then the later Authorities are against the Case in *Stiles*. If an Infant Executor bring Trover upon a Conversion in his own Time, he pays Costs, according to the Case of *Baller v. Delander*; and I do not see why he may not be as liable to be hurt by a Declaration or Replication as well as a Plea.

*Reynolds J.* It will be pretty difficult to adjust the Resolutions which have been cited on both Sides, with the general Reason of the Law; where the general Rule is, that no Infant can appear by Attorney; and that Provision for his Security will signify nothing, if another may make an Attorney for him. If he was a sole Executor Defendant, it seems to be agreed, that he could not appear by Attorney; and the only Point this is attempted to be supported upon is, that being joined with one of full Age, alters the Case. Now, if they were obliged to appear as one Person, I should think it might be well; but it is certain they are not obliged to do so; for as they may sever in Pleading, so one may appear by Attorney, and the other by Guardian; which shews, that to many Purposes they are not one Person in the Eye of the Law. But I must

own, I cannot see the substantial Difference between their being Plaintiffs and Defendants; and since it is admitted to be well in the Case of Plaintiffs, it goes a great Way with me as to the other Point.

*Probyn J.* The Law has always been jealous of putting an Infant under the Power of one who is not answerable to him, as a Guardian is. There is this Difference between their being Plaintiffs and Defendants; that as Plaintiffs they cannot sever in declaring, which they may do in pleading as Defendants.

After this Argument it stood upon a *Curia advisare vult*, till this Term, when Sir *Francis Page* being come into Justice *Fortescue's* Place, it was argued again upon his Account; upon the Argument, he and the Chief Justice were clearly of Opinion, that the Judgment was erroneous: And *Reynolds J.* said, he had considered it more fully, and was of Opinion, he could not appear by Attorney, though another was joined who could; and *Probyn J.* concurring, the Judgment of C. B. was reversed.

Who is the proper Person to be considered as Attorney in a Cause.

One *Crosby*, who was Attorney for the Defendant, gave Notice to the Plaintiff, that he would file common Bail; but, not being an Attorney of this Court, filed it in the Name of one *Stokes*. The Plaintiff's Attorney, however, looked out for *Stokes*, and served him with the Declaration, which the Court said was irregular; for he ought to have served *Crosby*. Accordingly, upon the Master's Report, set aside the Judgment. *Mitch. 2 Gea. 2. 1728. 1 Barnardist. K. B. 84.*

Who shall be said to be the Attorney in a Cause.

A Motion was made to set aside a Verdict for Want of Notice of Trial; but it appearing that the Notice was given to him who had been

been concerned in the Cause, though the Attorney told the Plaintiff, he would have nothing farther to do in it; the Court held the Notice to be regular; for the Court said, he who was first concerned in the Cause shall be considered to continue Attorney in it, till Notice is given to the Plaintiff of another. *Trin. 2 Geo. 2. 1729. Rush and Riggs, 1 Barnardist. K. B. 187.*

This was an Action upon the Case in the Common Pleas. Writ of Error was brought, and one Error assigned was, that 'tis not said that he appeared by Attorney; but the Court said, that they would intend that he appeared in Person. Indeed they admitted, that if the Surname of the Attorney had been only mentioned without the Christian Name; then, inasmuch as it appears that he came by Attorney, and there is no Attorney mentioned, that is a good Error. Another Error was assigned, and that was in the Writ of Inquiry, viz. that the Writ of Inquiry was executed on the Day of the Return, and that it does not appear it was executed during the Sitting of the Court, after which Time the Jurisdiction of the Sheriff as to that Purpose ceases. But this Exception the Court likewise over-ruled; for they said, they would not admit of any Fractions in a Day. *Mich. 13 Geo. 1. 1726. Braxton and Dyke, 1 Barnardist. K. B. 4.*

How far it shall not be necessary that a Person shall appear by Attorney.

The Plaintiff arrested the Defendant by Virtue of a *Capias*, tested the last Day of last Term, returnable the first Day of this; and that four Days before the Teste of his Original, which was on the 6th of *April*. Upon which Mr. *Strange* moved, that the Plaintiff might

How far an Appearance shall cure a Defect in Process.



be obliged to give *Oyer* of such an Original as would warrant the Proceedings, or else that the Proceedings might be stayed. Mr. *Fazakerly* on the other Side said, that Writs issuing out of this Court, can only be tested in Term-Time, though issuing out of Chancery they may; for which Reason, though the Original in this Case bore *Teste* in the Vacation, yet there was a Necessity, that the *Capias* should bear *Teste* in the Term before it: And he said, the Court has been of this Opinion before, in the Case of *Andrews* and *Dingley*. The Court said, that regularly one Part of the Process ought always to bear *Teste* upon the Return of the other, and that was held so in the Case of *Bradley* and *Banks*, *Yel.* 204. But yet they thought, that an Appearance would cure such Defect, and had done so in the Case before them; for which Reason the Court refused to make any Rule. *Pasch.* 5 *Geo.* 2. 1732. *Billingsley* and *Taps*, 2 *Barnardist.* K. B. 137. It was afterwards moved again: The Defendant had since the last Motion, demanded *Oyer* of the *Capias*, and pleaded, that he was arrested upon it four Days before the suing out of the Original, but had not verified this Plea by Affidavit. Upon which Mr. *Fazakerly* moved that the Plea might be set aside, and that with Costs, as being against the Opinion of the Court. The Chief Justice said, that he thought, that the Defendant was well intitled to *Oyer* of the *Capias*, but that he could not have *Oyer* of the mean Process without having *Oyer* of the original one, and that he had not demanded. Accordingly the Plea was

was set aside; with the Costs. 2 *Barnardist*.  
138.

A Bill of *Middlesex* having been sued out, How far the an Attorney subscribed on the Back of it, that Court will re- he would appear for the Defendant; but since-quire an At- refused it; because the Defendant would not-torney to enter an Appear- give him an Authority to appear. However-ance, accor- on Mr. *Theede's* Motion, the Court made a ding to his Rule upon him, to shew Cause why he should Undertaking. not appear according to his Undertaking.  
*Hil. 6 Geo. 2. 1732. Bumfield and James.*  
2 *Barnardist*. 232.

A Motion was made on Behalf of the Te- Attorney can- nant in Possession against *Davis*, an Attorney, not appear for for appearing and pleading for him without Tenant in Authority. It appeared that the Tenant in Possession by Order of the Landlord. Possession was Tenant at Will to Infants, by Order of whose Guardian, *Davis* had appeared and pleaded for the Tenant, and offered the Tenant Security to indemnify him; but *per Cur'*, a Defence cannot be made for the Tenant without his Consent: Let the Appearance and Plea be withdrawn. *Gapper* for Tenant; *Draper* for Lessor of Plaintiff. 1 *Barnes*  
33.

Plaintiff, after having been struck off the Proceedings Rolls of Attornies and Solicitors, carried on staid, Plaintiff Proceedings in his own Name, alledging, that having been struck off the Roll, and not of one *Vaughan*, an Attorney, pursuant to a able to verify a pretended written Authority; but not being a pretended written Au- able to verify these Pretensions, Rules were thority from another At- made absolute to set aside the Proceedings,orney. with Costs. *Wynne* for Defendant; *Willes* for Plaintiff. 2 *Barnes* 39.

Farell. 4.

No Man, though by Consent of Parties, can be Attorney of both Sides; for the Consent of Parties cannot change the Law.

1 Salk. 89.

If the Attorney in the original Action, acts as Attorney in the Proceedings against the Bail without any new Warrant, this is Error; for though any Person may take out a *Scire facias*, yet upon the Return, a Plea commences, and a new Warrant of Attorney ought to have been entred, because this is a new Cause and different Record.

If the Tenant makes an Attorney *in Banco*, and after Conuzance of this Plea is demanded by a Franchise; and granted, the Attorney shall continue Attorney for him in the Franchise also, without other making, and he is Attorney there *in facto*, without other Removal; for the Conuzance is granted to hold Plea as the Justices ought if this had not been granted. 21 Ed. 3. 45. b. 61. 21 Aff. pl. 17. Fitz. Tit. Resceit 133. 1 Rol. Abr. 290. S. C. So, if after Conuzance granted, a Re-summons be sued for the Failure of Right there in the Court where this was granted, he continues Attorney for him there also, upon the first Retainer. 1 Rol. Abr. 290. If Judgment be given *in Banco* against the Demandant, and this is reversed in *B. R.* for Error in the Process; the Attorney which the Tenant had in the first Plea, shall continue his Attorney now in *B. R.* to answer to the Original. 1 Rol. Abr. 290.

2 Show. Rep.

161.

1 Keb. 593.

In Debt on a Bail-Bond, the Principal gave a Warrant of Attorney to appear for himself, and likewise ordered the same Attorney to appear for the Bail, who were his Neighbours:

The



The Attorney appeared accordingly; and for want of a Plea, Judgment was had against the Principal and Bail, but upon Motion set aside as to the Bail; the Principal's Order not being a Warrant to appear for more than himself; but it being by Ignorance of Law, and not a wilful Act, the Judges discharged the Attorney as to any Contempt.

If there be a Mistake in the Attorney's Name, it may be amended by the Warrant of Attorney; for the Warrant of Attorney being precedent will amend the Roll, and the Court will take Notice that it is the same that appeared. *Moor 711.* But if the right Name be no where entred, the Court cannot amend.

It was moved to enter up Judgment on an old Warrant of Attorney, the Defendant being living, and the Debt unpaid; but it appearing, the Party to whom the Warrant was to confess, was dead, the Court would not grant the Motion.

Stran. 718.  
Cannot enter Judgment on a Warrant of Attorney after Plaintiff's Death.

Upon Error out of C. B. the Court held, that if there be a Warrant of Attorney of any Term *pendente lite*, it is enough to warrant the Proceedings, and there is no Necessity it should be of the Term in the *Placita*.

Stran. 526.  
Warrant of Attorney any Term *pendente lite* is sufficient.

A Warrant of Attorney may be entred at any Time before Judgment, or before a Writ of Error brought.

1 Rol. Abr. 290.

By the Statute 18 Hen. 6. c. 9. An Attorney shall enter his Warrant on Record in all Actions, where a *Capias* and *Exigent* lies, the same Term the *Exigent* is awarded, or before, on Pain of 40s. to the King.

When Warrant of Attorney shall be entred or filed.

By

When an Attorney shall enter his Warrant of Record.

By Statute 18 *Eliz. c. 14. f. 3.* it is enacted, "That all Attornies in any Suit or Action in any Court of Record, shall deliver in the Warrant of Attornies in such Action or Suit, wherein they be named Attornies, to be entred or filed of Record, in such Manner and Form as heretofore by the Law or Statute in that Behalf made, they should or ought to have done, upon Pain to forfeit Ten Pounds for every such Offence: The one Moiety thereof to be to the Queen's Majesty, her Heirs and Successors, and the other Moiety to such Officer or Officers to whom, or in whose Office the same Warrant should be delivered, entred or filed, and to suffer Imprisonment by the Discretion of the Justices of the Court for the Time being, where any such Default shall fortune to be had or made; the said Ten Pounds to be recovered by Action of Debt, Bill or Information, in which no Effoign, Protection or Wager of Law shall be allowed."

And by Statute 32 *Hen. 8. c. 30. f. 2.* it is provided and enacted, That in avoiding of Errors and other great Inconveniencies that daily do fortune to arise in the King's Courts of Record at *Westminster*, through the Negligence of Attornies, because they deliver not their Warrants of Attorney in such Actions and Suits, wherein they be named Attorney according to the Laws of this Realm; that all and every such Person or Persons, being Demandant or Plaintiff, Tenant or Defendant in any Action or Suit at any Time hereafter commenced or taken in any of the King's said Courts, and plead to any Issue in the same Action or Suit; that then the same Attornies and

and every of them, from Time to Time shall deliver or cause to be delivered, his or their sufficient and lawful Warrant of Attorney, to be entred of Record, for every of the said Actions or Suits wherein they be named Attornies, to the Officer or his Deputy, ordained for the Receipt and entring thereof in the same Term when the said Issue is entred of Record in the said Court or afore; upon Pain of forfeiting unto our said Sovereign Lord Ten Pounds Sterling for every Default, for not delivering of the said Warrant of Attorney.

By Statute 4 & 5 An. c. 16. s. 3. it is enacted, That the Attorney for the Plaintiff or Demandant in any Action or Suit, shall file his Warrant of Attorney with the proper Officer of the Court where the Cause is depending the same Term he declares; and the Attorney for the Defendant or Tenant shall file his Warrant of Attorney as aforesaid, the same Term he appears, under the Penalties inflicted upon Attornies by any former Law for Default of filing their Warrants of Attorney.

Error of a Judgment in the Common Bench: 2 Cro. 277.  
The Error assigned was (the Judgment being for the Defendant) that there was not any Warrant of Attorney for the Plaintiff; and a *Certiorari* being awarded, it was returned, that there was not any Warrant of Attorney in that Term wherein the Action was commenced, and Judgment given: Whereupon there were two *Scire facias* sued, and returned *nihil*, and the Record was marked, that it should be reversed; but the Judgment was not entred upon the Roll; which the Defendant in the Writ of Error surmised to the Court, *ut Amicus Curie*



*Curia* (for he could not plead that there was a Warrant of Attorney for another Term) and prayed a new *Certiorari*; and it was held by all the Court, that he might well have it; for otherwise, by the false Surmise of the Want of an Entry of a Warrant in one Term (where peradventure it is in another Term) it should be reversed; and it is not material in what Term it be entred, so it be entred at all: Wherefore it was granted and commanded, that the Entry upon the Record of the Reversal should be stayed until it was certified; and thereupon the Parties compounded.

Judgment reversed for that no Warrant of Attorney was entred such a Term.

In a Writ of Error to reverse a Judgment given in the C. B. in an Action of Debt, the Error assigned was, for that no Warrant of Attorney was entred in the Suit in such a Term. *Williams* Justice: It is a crafty Course to assign for Error, that there was no Warrant of Attorney entred in a Term certain. This Error assigned is a clear Error; and for this Cause, the Judgment given is erroneous, and to be reversed, because there was no Warrant of Attorney, and so the Rule of the Court was *quod Judicium revocetur*; but inasmuch as this was not entred of Record, and for that the Entry of the Warrant of Attorney in another Term was good, a *Certiorari* was prayed, to inform the Court of all the Proceedings, in regard that the Judgment for Reversal was not entred of Record, and the *Certiorari* prayed only to inform the Court, whether any Warrant of Attorney were entred, or not, and when. *Williams* Justice: If the Appearance were in this Term, and Judgment entred without any Warrant of Attorney, the Warrant of Attorney may

may be entred in the next Term following, and this is clearly good. The Judges then said unto the Plaintiff in the Writ of Error, This was for Fault and Neglect, that the Judgment for the Reversal was not entred of Record; for if the same had been entred, then this Motion had been prevented; but for this Omission, a *Certiorari* was granted by the Rule of the Court. 1 *Bulstr.* 21. *Pasch.* 7 *Jac.* 1.

A Writ of Error was brought upon a Judgment by *Nil dicit*, for want of a Warrant of Attorney, and the Record certified, and a *Certiorari* to the Clerk of the Warrants, and Error assigned for want of a Warrant. And the Court was moved, that a Warrant might be filed, and it was granted, and a Warrant filed accordingly. 1 *Brownl.* 46.

Warrant of Attorney filed upon a Motion, after Writ of Error brought, and Error assigned.

After a Writ of Error granted, a Warrant of Attorney cannot be filed, if the Party be alive who made the Warrant, but otherwise if he be dead. March 93<sup>d</sup> pl. 160.

If the Warrant of Attorney for the Tenant in a Common Recovery be dated after the Judgment, it is not good. 1 *Rol.* 290.

A Warrant of Attorney for the Principal is not sufficient for the Bail, in a *Scire facias* against him; for they are distinct Suits. *Salk.* 603.

In Debt Judgment was given against the Principal, whereupon a *Scire facias* issued forth against the Bail, and Judgment upon *Nil dicit* was given against them: Whereupon a Writ of Error was brought; and Error assigned, that there was no Warrant of Attorney filed for the Plaintiff; and upon Debate, whether

March 121. Where Warrant of Attorney may be filed after Error brought, where not.

ther the Warrant of Attorney ought to be filed or no, the Court seemed to incline their Opinion upon these Differences, but gave not any Judgment. First, Where it may appear to the Court, that there was a Warrant of Attorney, and where not. If there was not any Warrant of Attorney, there they cannot order the making of one; but if there was one, they conceived that they might order the filing it. Second Difference, Where the Warrant wanting were of the Part of the Defendant, and where of the Part of the Plaintiff, in the Writ of Error; If it be of the Part of the Plaintiff, such a Warrant of Attorney shall not be filed, because he shall not take Advantage of his own Wrong. The last Thing was, where the Record by the Laches of the Plaintiff in the Writ of Error is not certified in due Time, there the Warrant of Attorney shall be filed: And the Books cited to warrant these Differences were, 2 Hen. 8. 28. 7 Hen. 4. 16. 2 Eliz. Dyer 180. 5 Eliz. Dyer 225. 1 & 2 Phil. & Ma. Dyer 105. 15 Eliz. Dyer 330. 20 Eliz. Dyer 363. and 6 Eliz. Dyer 230. Note, that it was said by *Crawley*, that it is all one, where there is no Warrant of Attorney, and where there is; and he said, there are many Precedents accordingly, and that the same is aided by the Statute of 8 Hen. 6. c. 1, 2. But *Bankes* Chief Justice contrary, that it is not helped by the Statute of H. 6. and so it is resolved in 8 Rep. 162. and he caused the Prothonotaries to search Precedents, but yet he said they should not sway him against the printed Law, because they might pass *sub Silentio*. And the Chief Justice observed  
 I also,

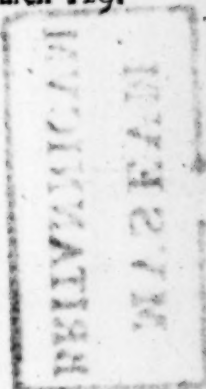


also, that the same is not helped by the Statute 18 Eliz. for that helps the want of Warrant of Attorney after Verdict only, and not upon *Nihil dicit*, as this Case is, or upon Wager of Law, or upon Confession, or *Non sum informatus*: And the Court said, that it shall be a mischievous Case, that Attornies should be suffered to file their Warrants of Attorney when they pleased; and therefore they gave Warning that none should be filed after the Term, and willed that the Statute of 18 Eliz. c. 16. should be put in Execution.

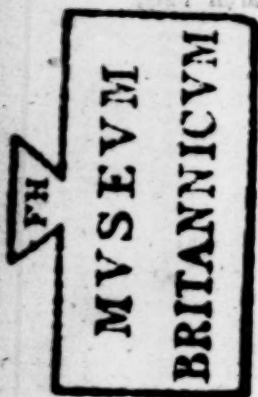
The Case before [or preceding Case] of the Warrant of Attorney was betwixt *Firburn* and *Cruse*, and was entred Trin. 17 Car. And now it was resolved, upon reading of Precedents in Court, that no Warrant of Attorney shall be made or filed, because that it is an Error and not helped, being after Judgment in *Nihil dicit*, and that none of the Precedents came up to our Cause. The greatest Part of Precedents were these, viz. the first was 1 Car. *Taylor* against *Thelwell*; the same appeared to be upon Demurrer, and no Judgment given. Another was Mich. 3 Car. 1. *Peasgrove* against *Brooke*; and in that Case it did not appear that any Writ of Error was brought. Another was, Pasch. 5 Car. 1. *Taylor* against *Sands*. Another Hil. 6 Car. 1. *Smith* against *Bland*; in that it was conceived to be an Amendment only; and it was agreed for Law, that where there was a Warrant of Attorney, it might be amended for any Defect in it; as where there is a Misprision of the Name or the like, as it is resolved Br. Amendment 85. And so is 1 & 2 Phil. & Mar. Dyer 105. pl. 6. expressly,

G where

March 129.



where *Alicia* for *Elizabeth* in the Warrant of Attorney was amended; and that after a Writ of Error brought by Construction of the Statute of 8 *Hen.* 6. and so is 9 *Ed.* 4. *Br. Amendment* 47. And Justice *Reeve* said, it cannot appear to us by any of the said Precedents, whether there was a Warrant of Attorney or not: And perhaps upon Examination it might appear to the Judges that there was a Warrant of Attorney, which is helped by the Statute 8 *Hen.* 6. and that might be the Reason which caused them to order that it should be filed; but that doth not appear to us, and therefore the Precedents were not to the Purpose. Besides, it doth not appear by any of them, whether Judgment were given or not; and before Judgment it may be amended, as the Book is, 9 *Ed.* 4. 14. *Br. Amendment* 47. Besides, in one of them the Plaintiff did neglect to remove the Record, which is the very Case in *Dyer*, and that was the Reason that the Warrant of Attorney was filed; but in this Case there appearing to be no Warrant of Attorney, it is not helped by the Statute of 8 *Hen.* 6. and after a Judgment, and that upon *Nilil dicit*, which is not helped by the Statute of 18 *Eliz.* and there is no Laches in removing of the Record by the Plaintiff; and for these Reasons, the whole Court was against the Defendant in the Writ of Error, that it was Error, and therefore ought not to be amended. Note, that in this Case it was moved that the Warrant of Attorney might be filed in this Court, after Error brought in the King's Bench: But observe, that if it had not been a Thing amendable, that had been no Impediment



diment to it; for Things amendable before Error brought, are amendable after; and if the inferior Court do not amend them, the superior may; and so it is adjudged 8 Rep. 162. in *Blackmore's Case*. And so is the Case express in the Point; and 1 & 2 Phil. & Mar. Dyer 105. pl. 16. where a Warrant of Attorney was amended *in Banco* after Error brought and the Record certified.

Memorandum. One was arrested in an Latch 8. Action of Debt, and he presently makes a Warrant of Attorney to acknowledge Judgment for him; upon which he was discharged. But afterwards he revokes the Warrant of Attorney, before the Judgment was confessed: And the Court, observing this cunning Practice, commands the Attorney to plead *Non sum informatus*, to the Intent that Judgment might be entered; and the Judges said, that they would defend the Attorney against the Party, if he brought an Action against him.

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#### C H A P. IV.

*Of the Power or Authority of an Attorney;  
and the Regularity of his Proceedings.*

THE Authority of an Attorney, when appointed, continues until Judgment, and for a Year and a Day afterwards, to sue out Execution, and for a longer Time if they continue Execution; but if not, the Judgment is supposed to be satisfied; and to make it



appear otherwise, the Plaintiff must again come into \* Court, which he either does by *Scire facias*, or an Action of Debt on the Judgment. *Comb.* 40. *1 Rol. Abr.* 378. *1 Rol. Rep.* 366. *Style* 426.

All Warrants for confessing Judgments taken by any Sheriff or Bailiff from any Person in his or their Custody by Arrest, if not executed in the Presence of some Sworn Attorney of either Court, and his Name set or subscribed thereto as a Witness, shall not be good or of any Force, and upon Oath made that the same was done, the same shall be set aside, and the Sheriff or Officer may be punished for so doing; and if Judgment be entered thereon, the same on Motion will be vacated and set aside; and if Execution thereon be executed, the Party will have Restitution awarded him. *1 Salk.* 402. *6 Mod.* 85, 163. *5 Mod.* 144. *Comb.* 76, 224.

*1 Salk.* 402.  
Warrant to  
confess Judgment  
given in  
Custody.

If a Man be arrested upon Process *ex Communi Banco*, or any inferior Court, and gives a Warrant to confess a Judgment in this Court while in Custody, no Attorney being there present, we can examine and set aside this Judgment; otherwise, where it is to confess a Judgment in another Court.

*Comb.* 76.  
Judgment set  
aside, no At-  
torney of B.R.  
being present.

A Judgment was set aside, because no Attorney of this Court was present when the Warrant of Attorney was given, although there was an ancient Practiser of the Common Pleas; for the Rule is to be understood of an

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\* And then a new Authority is necessary. *1 Salk.* 86.

Attorney of this Court only. See the following Case contra.

The Doubt was, Whether it be necessary 6 Mod. 85.  
an Attorney should be present at the executing Concerning an  
of a Warrant to confess Judgment by one un- Attorney's  
der Arrest by Process of an inferior Court? Presence upon  
And it was agreed, a Warrant  
given by one  
under Arrest  
to confess a  
Judgment.

1. That if one under Arrest confesses Judgment in this Court, in Presence of a Sworn Attorney of Common Pleas, it will be well; and so *Vice Versa*.

2. That though an Attorney be present, yet if there be Practice in obtaining it, it will be set aside.

3. If one under Arrest by Process of an inferior Court, gives Warrant for confessing of Judgment in that Court, we will not set it aside, though an Attorney be not present.

4. If one under Arrest by such Process, gives Warrant to confess Judgment in this Court, if an Attorney be not by, it will be ill.

5. If a Man be under Arrest, and seemingly discharged by the Bailiffs, with a Design that he should give a Warrant of Attorney to confess a Judgment, to stand tho' no Attorney were by, and to retake him in Case he did not, gives Warrant for confessing of Judgment, it will be set aside.

6. Though such Person be really discharged, yet if he has probable Reason to believe himself not to be discharged, and under such Apprehensions, he gives a Warrant for confessing of Judgment, it will be set aside; so if under Terror of Arrest.

1 Salk. 87.

Judgment by  
Confession up-  
on a Warrant  
of Attorney  
may be entred  
in the Vacation  
as of the Term  
precedent,  
tho' the De-  
fendant died  
in that Va-  
cation.

*Woodward* gave a Warrant of Attorney to confess a Judgment, and died within a Year after in Time of Vacation, before the Effoin Day of the subsequent Term, which was *Easter* Term; the Attorney after his Death entred up the Judgment as of the precedent Term, but brought not the Roll in before the Effoin Day of *Easter* Term; and it was now moved to have the Judgment set aside, the Warrant of Attorney being revoked by the Death of the Party. *Et per Holt C. J.* 1st, By the Course of the Court, a Warrant of Attorney to confess a Judgment is not revocable, and the Court will give Leave to enter up the Judgment, tho' the Party does revoke it, but it is determinable by the Party's Death; but if the Party dies in the Vacation, the Attorney may enter up the Judgment that Vacation as of the precedent Term; and it is a Judgment of the Common Law as of the precedent Term, tho' it be not so upon the Statute of Frauds in respect of Purchasers, but from the Signing; so that this Judgment being a Judgment at Common Law as of *Hilary* Term, it was a Judgment entred when the Party was alive, and therefore good without all Question, if the Roll had been brought in before the Effoin Day of *Easter* Term; but that not being done, the Question will be, Whether we can now admit it to be filed? By the Course of the Court, all the Rolls of *Hilary* Term ought to be brought in before the Effoin Day of *Easter* Term, and made Part of the Bundle of *Hilary* Term; and it is for this Reason, that what is done in the Vacation is looked upon as an Act of



of the Term preceding; and there cannot be a *Post terminum* Roll received without Leave upon Motion, which the Court does not grant, but when it appears that No-body can be prejudiced, for 'tis dangerous; and he said, that Practice should never have his Consent to be allowed again, for by this Means the Statute of Frauds and the Act for docquetting of Judgments will be frustrated; for if the Court allow the filing of this Roll in *Easter* Term as a Judgment of *Hilary*, when it was not among the Rolls of that Term, how shall Purchasers avoid the Consequence of it, when it was neither docquetted nor brought in: Upon this Account the Court disallowed the filing. *Oates v. Woodward, Hil. 1 An. B. R.*

*Lady Twisden* (the Defendant's Testatrix) Stran. 88 z. 9th of *February* 1729, gave a Warrant of Attorney to confess a Judgment; 18th of *April* 1730 she died, and the Judgment was signed 22d of *April*, as a general Judgment of *Easter* Term, which began the 15th; and upon Motion to set it aside it was insisted, that by the Death of the Party the Warrant was countermanded. 1 *Vent.* 310. *Salk.* 399. *Co. Litt.* 52. b. For it is considered as given only in Ease of the Party to excuse her personal Appearance in Court, and the Attorney cannot do more for her than she could for herself. And this is by Relation to divest a Right legally vested in the Executor; who in Confidence of the Goods may have advanced Money out of his own Estate.

But the Court said, that the Case of *Oates v. Woodward, Salk.* 87. [the preceding Case]

2 *Mod. Caf.* 93. was not to be got over; and that it being the Course of the Court to enter the Judgments as of the first Day of the Term, they could not alter it on Consideration of the Circumstances that attend a particular Case: Besides, this seems to be established by the Statute of Frauds, which provides for Purchasers, but has given no Remedy for this. *Mich. 4 Geo. 2. Fuller vers. Jocelyn.*

*Stran.* 530.

The Court held, that the Presence of an Attorney of C. B. at the Execution of a Warrant to enter up Judgment in B. R. was sufficient.

6 *Mod.* 163.

Administratrix, tho' not named, gives a Warrant to confess a Judgment under Terror of Arrest.

Administratrix owing Money to A. as such, but nothing in her own Right, was arrested by him by a Writ, without naming her Administratrix; and she being thus under Arrest, gives a Warrant of Attorney to confess Judgment: Whereupon Judgment being entred, and her Goods taken in Execution, and all this appearing by the Master's Report, though there had been an Attorney by, at the executing the Warrant of Attorney, the Judgment for Irregularity was set aside, and Restitution awarded; for she was in Custody without any Foundation, and under that Terror gave the Warrant. *Pasch. 3 Ann. in B. R.*

1 *Salk.* 399.

Warrant by a Woman, who afterwards marries, is revoked.

If a Feme Sole give a Warrant to confess a Judgment, and marry before it be entred, the Warrant is countermanded, and Judgment shall not be entred against Husband and Wife, for that would charge the Husband. *Pasch. 9 Will. 3. Anonymus.*

A Feme

A Feme Covert, who lived by herself and acted as a Feme Sole, gave a Warrant of Attorney to confess a Judgment, &c. and afterwards moved to set aside the Judgment, because she was Covert; but the Court would not relieve her, but put her to her Writ of Error. *Mich. 10 Will. 3. B. R.* Salk. 400. Judgment confessed by Feme Covert refused to be set aside on Motion.

If a Man be arrested at the Suit of *A.* and while he is under Confinement of the Bailiff, he gave a Warrant of Attorney to confess a Judgment; if there be no Attorney by, it is always taken to be by *Duress.* But when one is in Gaol a good while, and then another that is his Creditor, or supposed to be so, comes to him, and he voluntarily without any Compulsion, does confess a Judgment to him, that Judgment shall stand, though there be no Attorney. And if one be imprisoned in the King's Bench, and confess Judgment or Action to another, it shall be good; as if the Declaration be delivered to one in Custody of the Marshal, and he confesses the Action and gives Judgment, though there is no Attorney by, it shall stand. *Mich. 1 An. in B. R. Per Holt Chief Justice.* Farell. 115. Warrant of Attorney, no Attorney present.

Defendant being under Arrest for a just Debt, to get his Liberty, consented to give a Warrant of Attorney to confess Judgment to the Plaintiff; and there being no Attorney by, the Plaintiff did really discharge, as he pretended, the Bailiffs before the Warrant executed. Upon Examination of the Matter, *Holt* declared, he would be very well satisfied by Affidavits, that the Bailiffs were so discharged; so as if the Defendant had refused to



to execute the Warrant, they would not come again and seize on him, and that he would have Reason so to believe before he would let the Judgment stand; and though this were Debt for Money due upon a Mortgage, yet he said there ought to be Bail. *Hil. 1 An. in B. R. Gidden and Drury.*

Stran. 902.  
No Warrant  
of Attorney  
from a Pri-  
soner good  
but where  
there is an  
Attorney for  
the Defendant  
present.

Stran. 1245.  
One in Exe-  
cution may  
confess a new  
Judgment  
without the  
Presence of  
an Attorney.

The Court taking Notice of great Inconveniences following from holding a Warrant to confess Judgment by one in Custody to be good, if any Attorney (though for the opposite Party) was present; made a Rule, that for the future there should be an Attorney present on the Behalf of the Defendant.

The Defendant being taken upon a *Capias ad satisfaciendum*, paid Part of the Debt, and gave a Warrant of Attorney to confess a new Judgment for the rest, upon Time given him to pay it. This was moved to be set aside, because no Attorney was present on the Part of the Defendant when the Warrant was executed, according to two standing Rules of the Court of *Car. 2.* and *4 Geo. 2.* the first of which indeed speaking of Persons in Custody on Arrests, may extend only to *Mefne* Process; but the second is general, and relates to any Sort of Custody. But the Court held the Warrant of Attorney to be well given, for the Defendant had a Benefit by it in gaining Time, and the second Rule must be construed *being in Custody as aforesaid*; the only Intent of that being, to make it necessary to have an Attorney *on the Part of the Defendant*; whereas under

under the former Rule, an Attorney for the Plaintiff (who was not likely to advise the Defendant for the best) was sufficient. *Hil.* 19 *Geo.* 2. *Watkins vers.* Hanbury.

If the Defendant is arrested, and in Execution; and one becomes bound for him to the Plaintiff, and the Defendant gives him Judgment for his Counter-Security, it is good, though no Attorney were present: And it is not within the common Rule of the Court, because it was not given to the Person himself (in which Case there must be an Attorney present) but to a third Person. *Mich.* 7 *W.* 3. *Per Holt C. J.* *Churchy vers.* Roffe.

5 *Mod.* 144.  
Where in a Warrant of Attorney to confess Judgment, no Attorney need to be present.

*Holt* Chief Justice: If one under Arrest give a Warrant of Attorney to confess a Judgment to the Plaintiff, no Attorney being present, we generally vacate it; but if the Judgment were to another Person, as to his Bail, &c. it seems to be out of the Rule. *Comb.* 244.

In *Assumpsit* the Defendant pleaded *Non assumpsit infra sex Annos*, the Plaintiff replied; and for want of the Defendant's joining Issue in due Time, the Plaintiff's Attorney signed Judgment; but afterwards consented to accept the Joinder in Issue; but upon Motion to the Court to compel him to accept it, it was opposed, because the Plea was a hard Plea, and the Client had Notice of the Advantage, and ordered the Attorney to insist upon it: The Court said, that since it was a hard Plea, they would not have compelled him, if he had not consented to waive the Advantage, but now they would hold him to his Consent; and for the

1 *Salk.* 86.

the Client; he was bound by the Consent of his \* Attorney, and they could take no Notice of him.

8 Co. 58.

Cro. Jac. 211.

Jenk. 283.

1 Salk. 89.

In Debt, the Plaintiff by Attorney cannot enter a *Retraxit*, because that is a perpetual Bar, and in Manner of a Release.

In Trespass in C. B. there was a Verdict for the Plaintiff, and his Attorney entred a *Remittit Damna* as to Part, and Judgment for the rest; and it was held, that the Attorney, by his being constituted Attorney, may remit Damages, and that a *Remittitur* need not be by the Plaintiff in *propria Persona*, as a *Retraxit* must.

Jenk. 52.

If a Client desires his Attorney to put in a Plea which the Attorney knows to be false, in such Case he may plead *Quod non fuit veraciter informatus*, and thereby he discharges his Duty.

Where two brought Error and made two Attornies.

Two brought a Writ of Error, and made two Attornies upon the *Sci. fac'*: The one Attorney assigned Error; to which the Defendant took Issue, and then the other would plead in Abatement of the Writ. *Per Cur'*; If one of the Plaintiffs had made Default, he should be severed; but if they go on, they must proceed jointly; and if one Attorney will assign Error, &c. without Authority from both, we cannot help it, let him take his Remedy against the Attorney. 6 Mod. 40.

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\* The Attorney's Consent to stand to an Arbitration will bind the Client. See *Carth.* 412. 1 *Salk.* 70.



The Court set aside a Judgment entred upon a Warrant of Attorney, given in Ireland by the Defendant whilst in Custody, on Mesne Process at the Suit of the Plaintiff, because no Attorney was present at the giving it, according to the Rule of 4 Geo. 2. and said that was an universal Rule; and this Plaintiff, if he would make use of this Court, must conform to its Rules; comparing it to the Case of Stamping Foreign Deeds before they can be read here. *Hil. 19 Geo. 2. Fitzgerald vers. Plunket.*

Stran. 1247.  
No Judgment can be entred but on a Warrant agreeable to the Rules tho' executed abroad.

One Mynn an Attorney entered a Judgment by Colour of a Warrant of Attorney, of another Term than was expressed in the Warrant; the Court consulting with the Secondary about it, he said, that if the Warrant be to appear and enter Judgment as of this Term, or any Time after, the Attorney may enter Judgment at any Time during his Life; but in the Case in Question, the Warrant of Attorney had not these Words, *or at any Time after*: Wherefore the Secondary was ordered to consider the Charge of the Party grieved, in order to his Reparation, which the Court said concluded him from bringing his Action on the Case. The Secondary said, that in *Trin. and Hill. Term*, they could not compel the Party in a *Habeas Corpus*, to plead and go to Trial the same Term; but in *Michaelmas* and *Easter Term* they could. *Mich. 21 Car. 2. Anno 1669. in B. R.*

1 Mod. 1.

Mr. Reeves moved for an Attachment against the Attorney for the Prosecutor, for taking out an Attachment against the Defendant, for not paying

1 Barnard.  
K. B. 147.

How far an Attorney has no Authority to receive a Sum of Money, without an Order for that Purpose.

paying 5*l.* in Pursuance of a Rule of *Nisi prius*, which he had entred into, and was made a Rule of this Court; whereas the Prosecutor himself ordered the Defendant not to pay the Money to the Attorney. It appeared too, that the Defendant had paid the Prosecutor the Money before he was taken up upon the Attachment, and yet he was forced to give Bail to it below. The Court said, they did not know an Attorney had any Power to receive Money agreed to be paid in such a Manner, without an expresse Authority from his Client; accordingly they made a Rule upon him to attend, tho' refused to grant an Attachment.

If *A.* gives a Warrant of Attorney to one to confess Judgment in Debt to *B.* by *Non sum informatus* at Eight in the Morning, and at Ten the same Day *A.* dies before the Judgment is signed by the Secondary, yet the Judgment is regular. *Raym.* 18. A Warrant of Attorney to confess Judgment is not revocable, and the Court will give Leave to enter up the Judgment though the Party does revoke it, but it is determinable by the Party's Death; but if the Party dies in the Vacation, the Attorney may enter up the Judgment that Vacation, as of the precedent Term, and it is a Judgment at the Common Law, as of the precedent Term; though it be not so upon the Statute of *Frauds* in respect of Purchasers, but from the signing; also the Attorney must bring in the Roll before the Effoin of the subsequent Term, otherwise the Court will not admit it to be filed. 1 *Salk.* 87. *Raym.* 69. *Latch* 8.

## C H A P. V.

*Of the Determination of the Power of an Attorney, and of dismissing or changing him.*

**B**Y the Judgment against the Defendant, <sup>2 Inst. 378.</sup> the Warrant of Attorney is determined; for thereby *Placitum terminatur*; but only to sue Execution (which is the Fruit of the Judgment) within the Year: And if he sue out Execution within the Year, he may prosecute the same after the Year; but if he sue out no Execution within the Year, then after the Year is ended after Judgment, his Warrant of Attorney is determined.

Error on an Award of Execution against Bail. The Record of the principal Judgment was returned; and it was objected, that the Plaintiff at the Return of the *Scire facias* appeared by J. S. his old Attorney, and prayed an *Alias*; and that J. S. acted on as Attorney throughout the Whole, and yet had no other Warrant than the old one, which was given him in the original Action. *Et per Holt* C. J. Any one might sue out or pray the *Scire facias*, and therefore the old Attorney might; but when the *Scire facias* is returned, then the Plea commences, and a new Warrant of Attorney ought to have been entred, which is by entring *Quod querens ponit loco suo, &c.* For the Warrant to appear in the principal Action is no Warrant to appear in the *Scire facias* Warrant of Attorney for the Plaintiff in the Action against the Principal, cannot extend to the Suit against the Bail, but there must be a new one.



*facias* against the Bail; because this is a new Cause and a different Record. Also the Chief Justice said, that upon this Writ of Error, the Record of the Judgment against the Principal ought not to have been certified. Judgment reversed. 1 *Salk.* 89.

Farell. 50.

*Per Holt*, Chief Justice: You can't change your Attorney without Leave of the Court, to be obtained on Motion, though he be ever so great a Cheat.

Raym. 69.

The Plaintiff obtained a Judgment in Debt, and received the Money, and made a Letter of Attorney to another that he might acknowledge Satisfaction; and afterwards, and before Satisfaction acknowledged, revokes his Warrant: And *Allen* moved that the Attorney might proceed, and that the Court might save him harmless; and the Court gave Rule, that no Proceeding should be upon the Judgment, without Motion first made in the Court for it.

See Farell.  
50.

By an Order of the Courts it is provided, that no Person without Rule of Court, Order of the Judge or Secondary, and Notice to the adverse Party or his Attorney, shall change or shift his Attorney; or if done by such Order as aforesaid, such Attorney newly coming in, is to take Notice at his Peril, of the Rules in the Cause, whereof the former Attorney was liable to take Notice, and shall also pay such first Attorney upon Demand, all such Fees as the Secondary shall tax to be due to him.

Where the Attorney for the Plaintiff or Defendant dies pending the Suit, and the Party whose Attorney is dead, will not retain another Attorney to manage his Cause, the

Attorney against him may proceed, and is not bound to hinder his Client's Cause. See *Jenk. 179. Style's Pract. Reg. 13.*

In an Indictment of Barretry against the Defendant, Mr. *Strange* moved, that the Trial might be put off for a few Days, which the Defendant had given Notice of for the Sittings after Term, by reason that the Prosecutor had for some Reasons changed his Attorney, and at present was not able to get the Papers relating to this Cause out of the Hands of his former Attorney. Judge *Page* said, that a Man cannot change his Attorney but by Rule of Court. Mr. *Strange* agreed he could not in Civil Actions, but in Indictments he said he might. However, as there was no ill Practice assigned in the Attorney as a Reason for his being changed, the Court refused the Motion. *Pasch. 6 Geo. 2 The King and Jeffs, 2 Barnardist. K. B. 266.*

The Plaintiff moved for Leave to change her Attorney, and to appoint Mr. *Umfrevil* instead of Mr. *Forrest*: And a Rule being made to shew Cause, *Forrest* made it appear that he had been at great Expence and Trouble, and had done his Client good Service; wherefore the Court thought it unreasonable that another Attorney should be appointed till *Forrest's* Bill of Costs were settled and paid; and discharged the Rule. *Skinner* for Plaintiff; *Eyre* for *Forrest*. 1, *Barnes* 35.

How far a Person may change his Attorney, or not, without the Leave of the Court.

Attorney not to be changed till his Costs paid.

## C H A P. VI.

*Of an Attorney's Fees and Disbursements,  
and the Remedy he has for the Recovery  
of them.*

SEE the Statute 3 Jac. 1. c. 7. in Page 9.  
and the Adjudications thereon from Page  
11 to Page 14. See also the Statute of 2  
Geo. 2. c. 23. §. 23. in Page 33.

1 Salk. 89.  
in B. R.

The Executor of an Attorney brought an  
Action for Fees and Law Business done by  
his Testator; Defendant moved to refer the  
Plaintiff's Demand to the Master, but denied,  
because all the Business was done in another  
Court: Otherwise, had the Business been done  
in this Court, or partly in this; and besides,  
the Plaintiff was an Executor.

2 Roll. Rep.  
474.

Debt, &c. in which the Plaintiff declared,  
that the Defendant retained him, *ad tunc existen'*  
*one of the Deputy Clerks of the Inrollments*, to  
inroll certain Indentures for him, *Capiendo inde*  
*pro labore suo & pro feodo Clericorum*, ten  
Shillings for every Roll; then he sets forth, that  
by Virtue of the said Retainer he did inroll so  
many Deeds: Upon *Nil debet* pleaded, the  
Plaintiff had a Verdict; it was argued in Ar-  
rest of Judgment, that a Deputy Clerk could  
not have an Action of Debt for Fees; he may  
have an Action on the Case *pro Labore*; but  
none except the Chief Officer can have an  
Action of Debt, &c. and so it was adjudged.



In Debt, &c. the Plaintiff declared, that he Cro. Car. 76. is an *Attorney* of the Common Pleas, and that the Defendant retained him to prosecute a Suit, in which he was Plaintiff against G. D. and agreed to pay his Fees, and shewed, that he had laid out so much, and that the Defendant had not paid him: Upon *Nil dicit* pleaded, the Plaintiff had a Verdict; and upon a Writ of Error brought, the Error assigned was, that the Plaintiff was but a *Solicitor* and no *Attorney*, and so there is no Consideration to ground this Action; for 'tis *Maintenance to solicit Suits*; besides, Debt will not lie, because there is no Contract between him and the Plaintiff; therefore he should have brought an *Assumpsit*, &c. but these Exceptions were disallowed, and the Judgment affirmed.

It was the Opinion of the Court, that an Cro. Car. 159. Attorney may be a *Solicitor* for his Clients in other Courts as well as in the Court where he is an Attorney, and a Solicitor of an inferior Rank may take Recompence for soliciting Causes for his Clients; and an *Assumpsit* for Money laid out in Fees is maintainable.

*Prohibition to the Spiritual Court* upon a Li- 1 Mod. 167. bel there by a *Proctor* for his Fees; if it had been for a *customary* Fee, a Prohibition should be granted; because whatever arises out of a *Custom*, is triable at *Common Law*; but where the Libel is for Fees in general in the *Spiritual Court*, such Fees arise by *Provincial Constitutions*, and that Court is the proper Place of Judicature in such Cases; so that the Prohibition was denied, against the Opinion of *Atkyns*, who held, that the Retainer was an implied

Contract, by Virtue whereof the Plaintiff had his Remedy at Law.

1 Salk. 86.

*Indebitatus assumpsit*, &c. was brought by an Attorney in B. R. for his Fees and Disbursements in defending a Suit in an inferior Court: The Defendant pleaded the Statute 3 Jac. 1. cap. 7. Adjudged, 1st, That this Statute may be as well pleaded to an *Indebitatus assumpsit* as to the Action of Debt, unless a special Promise be laid; but to a special Promise, or an *Insimul computasset*, 'tis no Plea. 2dly, The Statute does not extend to Attornies in inferior Courts, but only to Attornies in the Courts at Westminster; so that 'tis no Plea as to the Plaintiff; Ergo Judgment for the Plaintiff.

1 Salk. 89.

Executor of an Attorney brought an Action for Fees and Disbursements of his Testator; the Defendant moved B. R. to have the Plaintiff's Demand referred to the Master; but it was denied, because the Business was not transacted in that Court, nor any Part of it.

Attornies must deliver Bills before they bring an Action for them.

It was settled by the Court on great Consultation, and delivered in a solemn Resolution by Eyre Chief Justice, that an Attorney's Bill must be delivered, on the 3 Jac. 1. c. 7. before any Action brought; that so the Client may have an Opportunity of looking into it, before he is run to any further Expence. 2 Geo. 2. c. 23. s. 23. *Strange Rep.* 633.

The Executrix of an Attorney pays no Costs, tho' a sixth Part of the Bill is taken off.

An Attorney delivered his Bill, and after his Death, Application was made to tax it, and above a Sixth Part was struck off: It was moved that the Executrix might pay the Costs: but the Court held she should not, for the Words of the Act 1 Geo. 2. c. 23. s. 23. impose

pose them upon the Attorney or Solicitor only, and the Executrix is not to blame, if she stands upon his Bill, or makes out one from his Books. *Stran.* 1056.

In an Action brought by the Plaintiff, as Attorney, for a Bill of Law-Charges, he produced one Witness to prove, that the Defendant approved of his Proceedings, and that, his Counsel submitted, was a sufficient Evidence of a Retainer; and produced another Witness to prove, that a Bill was delivered before the Action brought, and that his Counsel submitted, was a sufficient Evidence of the Truth of the *Items* in it, without proving the several Particulars. Serjeant *Uryln* objected to the contrary. But Mr. Justice *Page*, who tried the Cause, was of Opinion for the Plaintiff in both Points. *Hil. 6 Geo. 2. Richardson and Martin, 2 Barnardist. K. B. 233.*

When an Action is brought by an Attorney on a Bill of Law Charges, what shall be said to be a sufficient Evidence in such Action.

Mr. *Fenwick* moved, that a Promissory Note of Forty Pounds, but not for Value received, given to an Attorney of this Court for Law-Charges, might be referred to the Deputy, to see what was due upon it; and that upon Payment of what was due, Proceedings at Law in this Court might be staid: He said, there was a direct Imposition in obtaining the Note; and in Fact there was but Twenty Pounds due to the Attorney when the Defendant gave it. The Chief Baron said, that if it had appeared upon the Face of the Note, that it was given for Law-Charges, they might have done it; but here they could not; and the only Remedy is to take Advantage of this Imposition upon the Trial, or to prefer a Bill. But Mr. Baron *Carter* seemed at first to think

How far the Court will not proceed in a summary Method relating to Attornies.



that it might upon Motion; and to this Purpose he mentioned *Rhode's Case* in Chancery; where even a Bond and Judgment was given: And the Court looked into the Whole upon Affidavits, and this even upon a Motion. But the Chief Baron said, that that Case was between Attorney and Client; and there it might certainly be done; but here it was between an Attorney and a third Person. And accordingly the Court rejected the Motion; Baron *Carter* agreeing, that that might be the Difference. *Micb. 3 Geo. 2. 1729. Anon. 1 Barnardist. K. B. 246.*

How far the Court will direct or not, that an Attorney's Bill shall be taxed when a Security is given for the Payment of the Money.

The Plaintiff brought an Action of Debt upon a Bond, with a Condition for the Payment of a Bill of Law-Charges. And upon this the Defendant moved, that the Bill might be taxed. But upon the Conditions being read, and it seeming to be a Special Condition of a particular Agreement between the Parties, the Court doubted, whether it could be done; but however made a Rule to shew Cause. Mr. *Lee* came now to shew Cause, why the Rule should not be absolute. The Case being fully laid before the Court appeared to be thus; That a *Mandamus* was directed to the *Trinity-House* at *Hull*, to restore the Plaintiff to be one of the Brothers of that Society; they were willing to make up the Matter, so agreed to restore him, and that the Defendant, who was one of the Brothers, should enter into a Bond to pay the Costs of the Plaintiff's Attorney's Bill; the Defendant did not pay it; upon which the Plaintiff was forced to do it; and now he brought an Action upon this Bond, and

and made Affidavit, that he was informed and believed the Bill was reasonable. The Motion now was, Whether the Court should order this Bill to be referred to the Master, and upon Payment of what was due, stay the Proceedings. Mr. *Fazakerly* said, that in the Case of *Martin and Thompson*, he was informed the Court of Common Pleas granted a Motion of this Sort, where the Defendant himself entered into such an Agreement; and the Reason for that Case was, that the Defendant had put him into the Place of the Plaintiff, and as the Plaintiff should have this Privilege, the Defendant shall have it too. Now, he said he could not see how the present Case differed from that; and though he admitted very willingly, that he could not bring Money into Court, and strike it out of the Declaration; yet he said, he thought the Court had gone so far as to allow Proceedings. But the Court said, they could not allow of the Bill to be examined in this Manner. And Judge *Page* observed, that in no Way they could stay the Proceedings; for, he said, in Actions of Debt upon Bond for a Sum certain, the Court had gone so far; but never where the Condition was for Performance of collateral Covenants; and the present Case was in Reason something of that Sort. But, however the Court advised the Plaintiff to go before the Master to save a Suit in Equity, which accordingly was agreed to. *Hil. 2 Geo. 2. 1728. Bagwell and Jobson, 1 Barnardist. K. B. 144. Pasch. 2 Geo. 2. 1729.*

When an Attorney sues out a Commission of Bankruptcy, against whom he must take his Remedy to recover the Expences of suing out the Commission.

1 Barnardist.  
K. B. 315.  
Pasch. 1729.

The Mother of one *Hicks* employed the Plaintiff, who was an Attorney, to take a Commission of Bankruptcy against her Son, she being a principal Creditor to him; and this was done out of Affection to her Son, in order to set him up a clear Man in the World again. But at the same Time that she gave these Instructions to the Plaintiff, she told him, he must not expect to be paid by her, but be satisfied out of the Effects of the Bankrupt. The Attorney accordingly laid out several Sums of Money in procuring this Commission before Assignees could be appointed, and when they were nominated, they agreed to take upon them this Trust, by setting their Hands as Parties to the Deed. He was at other Charges too. Upon which he now brought his Action against the Defendants as Assignees, to be satisfied for the Whole which he had laid out. It appearing now upon the Face of the Evidence as it stood at present, that the Assignees had not received Effects enough of the Bankrupt in the Whole to answer so much as the Bill of the Attorney, nor were likely to do so; a Thought arose, whether the Attorney should come upon the Assignees at all; or at most for any more than the Attorney had laid out after they had accepted the Assignment; for they could not be supposed to agree to any more than they themselves were privy to. But the Counsel observed, that as the Effects of the Bankrupt are not likely to answer this Demand; and as the taking out of the Commission by the Brother was not in an adversary Way to get in her Debt, but out of Friendship and Affection to her



her Son, to the Prejudice perhaps of many of the Creditors; she ought to be answerable to the Attorney. The Fact appearing thus, the Chief Justice said, it was true indeed the Attorney ought to be satisfied first for procuring the Commission; but yet he thought too, that would be something of a hard Case, that the Assignees should be any farther liable than the Effects amounted to. But then it coming out upon farther Examination, that the Effects were appraised to more than the Bill came to, though the Assignees had not got them into their actual Possession, the Court said, the Plaintiff's Demand was clearly good against them, because they had a Right to get them where-ever they can find them. But yet there was another Point, upon which the Chief Justice said he thought the Plaintiff must be non-suited; because the Statute of 3 Jac. 1. requires that every Attorney shall deliver a Bill, signed with his own Hand, before he commences a Suit for Fees; now in the present Case it appeared, that the Warrant of Arrest was made out before a Tender of a Bill; for the Bailiff first shewed the Defendants the Bill and demanded the Money, and upon Refusal, immediately arrested them: The Chief Justice said, he was of Opinion the Suit began by taking out the first Process, which must be intended to be before the Warrant made out; and therefore the Tender after was void. And this Opinion the Chief Justice was of, notwithstanding two Objections made by the Counsel; one, that a taking out a Commission was not a Suit within the Act; the other, that a Court ought not to go out of the Record for the

Commencement of the Suit; and upon the Face of the Record, the Suit appears to be of *Michaelmas* Term last, and the Tender of the Bill was the 17th of *October*. So upon the Whole of this Matter, the Parties agreed the Plaintiff should have the whole Bill paid him without Costs. 1 *Ven.* 135, 370. 2 *Ven.* 174. 6 *Mod.* 309.

How far an Attorney is bound to deliver in his Bill before he commences his Action.

*Note*, The Case of *Godfrey and Clerk* was cited, to be determined upon full Debate in the Common Pleas, that the Attorney must deliver in his Bill before he begins his Suit, though before that it was a common Thing for an Attorney to deliver in his Bill at the Time pending the Suit. 1 *Salk.* 86.

How far an Attorney's Clerk may maintain an Action for Business done during his Clerkship.

This was an Action brought by the Plaintiff for Law-Charges in Business done when he was Clerk with an Attorney; but there was a Covenant in the Articles, that he should not practise during his Clerkship. Mr. *Kettleby* objected for the Defendant, that the Service of the Clerk must be for the Benefit of his Master; and therefore that this Action ought to have been brought by the Master only. He said, he thought this to be like another Case very well known, that whatever Money an Apprentice earns of another, that other must be accountable for it to the Master, if the Earning is in the Way of the Trade the Apprentice is bound to; for the Master has a Right to the whole Profit of the Business. In the Course of the Evidence, this Objection had been hinted at once or twice before, and then the Chief Justice said, that he thought this Action would lie for the Clerk notwithstanding; and the Master must take his Remedy

medy by Way of Action of Covenant against the Clerk. But Mr. *Kettleby* starting the Objection now more fully, the Chief Justice ordered him to prove what he could: Upon which he produced the Articles, and said, that it would appear by comparing the Dates of them, and the Time laid in the Declaration when the Service was done, that it was performed during the Clerkship. But the Court would not allow them to be read; because the Articles were not duly proved; for the Witnesses to them were alive, and the Defendant had not taken the proper Means that might have been used in procuring them to have been *subpana'd*; and as those were the proper Persons to prove them, the Chief Justice said, he would not allow others to prove their Hands, but where the proper Witnesses could not be procured. Accordingly a Verdict was given for the Plaintiff. *Trin. 2 Geo. 2. 1729. Myonet and Broome, 1 Barnardist. K. B. 322.*

An Action of the Case was brought by the Plaintiff, being an Attorney, for Money laid out for the Defendant, and for his Fees.

What Method  
an Attorney  
is to take to  
recover his  
Fees.

The Defendant pleaded in Bar the Statute of 3 Jac. and that the Plaintiff had given him no Bill; and the Plaintiff demurred.

But *per Cur.* It is a good Plea; and he having declared Specially, and it appearing in his Declaration, that his Action was for Fees and Money laid out in Soliciting, it was very proper to plead it; and if he had brought a general *Indebitat*, then the Statute might have been given in Evidence at the Trial; because there it could not be pleaded, it not appearing  
in



in the Declaration, for what the Action was brought.

Another Exception was taken to the Plea, because it was pleaded in Bar and not in Abatement; but that was held well enough. *Mich. 1678. Freeman's Rep. 257.*

Attorney's  
Bill for Con-  
veyancing not  
to be taxed.

Proceedings  
by Attorney  
stayed 'till Bill  
delivered.

Rule to shew Cause why Plaintiff's Bill of Costs should not be taxed. Discharged; the whole Demand appearing to be for Conveyancing Business; and Plaintiff must recover upon a *Quantum meruit*. *Comyns* for Plaintiff; *Draper* for Defendant. *1 Barnes 37.*

The Court, upon reading the Acts of Parliament relating to Attornies and Solicitors, *3 Jac. 1.* and *Geo. 2.* made a Rule, that Plaintiff should shew Cause why all Proceedings should not be stayed 'till he delivered Defendant a Bill of Costs. *1 Barnes 28.*

*Agar* moved to stay Proceedings in this Action, which was brought for Recovery of a Bill of Costs before Expiration of a Month after the Delivery thereof. *Hawkins* for Plaintiff urged, that this Matter may be pleaded, or taken Advantage of at the Trial, and therefore Proceedings ought not to be stayed on Motion. No Rule. *1 Barnes 96.*

Defendant moved to stay Proceeding in an Action brought for Fees, no Bill of Fees having been delivered, and obtained a Rule *Nisi*; but upon shewing Cause, the Court were of Opinion, that they could not consider the Matter as an Irregularity because it is illegal, and against an Act of Parliament; but set aside the Judgment and Inquiry upon Payment of Costs, bringing the Money into Court, pleading

ing the general Issue, and taking short Notice of Trial. 1 *Barnes* 166.

Plaintiff's Testator recovered in an Interlocutory Judgment against Defendant, and died before the Execution of a Writ of Inquiry. The Judgment was revived by Plaintiff as Executrix, and a Writ of Inquiry was executed before the Lord Ch. Just. at Sittings; when Defendant agreed to pay Plaintiff 420*l.* for Damages and Costs: This Sum was paid into the Hands of Mr. *Boson*, Plaintiff's Attorney, who also had been concerned for Testator in this and other Causes. *Boson* paid Plaintiff 220*l.* and kept the remaining 200*l.* giving Plaintiff a Note to account for the Surplus, if any should appear, after Payment of his Bills of Costs. Plaintiff afterwards employed another Attorney, and applied to the Court against *Boson*, that he might pay the 200*l.* to her, deducting only such Costs as were due from her since the Time of her Husband's Death, when she became Plaintiff, and employed *Boson*, and obtained a Rule to shew Cause, which was discharged on hearing Counsel on both Sides; the Court being of Opinion that they ought not to interpose in this Case; but Plaintiff may bring her Action against *Boson*, if she thinks fit. *Eyre* for Plaintiff; *Chapple* and *Skinner* for *Boson*. 1 *Barnes* 31.

Two Judges had been formerly applied to for an Order to tax Mr. *Butler*'s Bill, late Attorney for Defendant; the Bill, amounting to little more than 3*l.* had been paid in Parcels, some Part four Years ago, the last about 12 Months: Both the Judges refused to order a Taxation. Defendant moved that the Bill might be taxed. Attorney's Bill that has been paid, not to be taxed; and Rule to shew Cause clandestinely obtained, discharged with Costs.

might be taxed, without disclosing what passed before, and had a Rule to shew Cause, which was now discharged, with Costs. The Act of Parliament directing Taxation of Attornies Bills, supposes them unpaid; this appears to have been paid long ago. After Application to one Judge, (unless he had been doubtful) no Application ought to have been made to another Judge; after the Opinion of two Judges, neither of whom doubted, or directed a Motion, the Application to the Court was wrong. *Agar* for Defendant; *Wynne* for *Butler*. 2 *Barnes* 39.

Defendant had obtained a Treasury Rule for Taxation of Attorney's Bill, at Peril of Costs.

Defendant had obtained a Treasury Rule for Taxation of Plaintiff's Attorney's Bill, at Peril of Costs. On Plaintiff's Application to the Court to discharge the Treasury Rule, the Court ordered the Bill to be taxed as between Attorney and Client, at Peril of Costs. *Poole* for Plaintiff; *Bootle* for Defendant. 2 *Barnes* 121.

How far the Court will direct that an Attorney's Bill shall be taxed, notwithstanding he has obtained a Security for his Money.

An Attorney having brought an Action upon two Bonds given by the Defendant in *November* last, in Satisfaction of a Bill of Law-Charges, Mr. *Strange* moved, that the Plaintiff might deliver in a Bill, that it might be referred to the Master to be taxed, and that in the mean Time all Proceedings might be staid. He said, that after an Attorney has had his Bill paid him, the Court will even grant, that the Bill may be taxed; and therefore there was much stronger Reason for granting the Motion in the present Case; which the Court accordingly did. *Pasch.* 5 *Geo.* 2. *Palmey* and *Swan*, 2 *Barnardist.* K. B. 128.



In an Action brought by an Attorney for Fifty Guineas upon a special Promise of the Defendant, for Business done in his Profession, Mr. *Hussey* moved, that it might be referred to the Master to see what was due; and that upon paying the same, all Proceedings might be staid. The Court said, as this Action was founded upon a special Agreement, they could do nothing in it: Accordingly the Motion was refused. *Trin. 5 Geo. 2. 2 Barnardist. K. B. 164.*

*Nathaniel Hyde*, the Grandfather of the Plaintiff, and *Alice* his Wife, by Lease and Release convey certain Lands to Trustees and their Heirs, in Trust, for *Nathaniel* for Life, and after his Decease, in Trust, to sell, and to pay the Money, and Profits till Sale, to such Child or Children, as *Alice* should appoint. *Nathaniel* dies, and *Alice* in Pursuance of her Power appoints, that the Trustees till a Sale, should stand seized to the Use of her Son *Nathaniel* for Life, Remainder to the Trustees to preserve contingent Remainders, Remainder to the first and every other Son of *Nathaniel* in Tail Male, Remainder to the Heirs of the Body of *Nathaniel*, with several Remainders over, and that when the Estate should be sold, other Lands should be purchased with Money, and settled to the same Uses. The Plaintiff, as Daughter and Heir of the Body of *Nathaniel* the Son, claims the Lands under that Appointment, and brings her Bill *inter al'* against the Defendant *Wigmore*, to have the Title Deeds, and Writings of this Estate that were in his Hands delivered up.

The Court would not oblige an Attorney to deliver up Title Deeds till the Plaintiff paid him a Bill of Costs, which his Client, from whom he receiv'd them, owed him, because the Plaintiff enjoyed the Estate under an Appointment of the Client.

The Defendant *Wigmore* in his Answer sets forth, that he received them from *Alice*, among other Writings, as her Attorney, and insists upon keeping them till he is paid a Bill of 60*l.* for Fees and Disbursements, which *Alice* was indebted to him. And the Lord Chancellor thought this very reasonable, and decreed accordingly, because the Plaintiff claimed under *Alice*, who might have appointed the Estate, in Favour of any other Child, as well as of the Plaintiff's Father. But the Counsel for the Plaintiff seemed very dissatisfied, and mentioned the Case of *Brook of Oxford*, where his Lordship declared, that an Attorney or Solicitor could keep only his Client's Deeds till his Bill was paid, but not those of any other Person, especially such as even his Client on a Bill would have been decreed to have delivered up, *Mich. 1726. Hyde against Wigmore et al', Mosely's Rep. 12.*

A Solicitor may take out a Commission of Bankruptcy for his Fees, whilst his Bill is under Taxation by Order of Court.

An Order was made, that a Solicitor's Bill should be taxed by a Master, and that all Proceedings at Law should in the mean Time be stayed, and whilst the Bill was under Taxation, the Solicitor sues out a Commission of Bankruptcy against his Client; and on a Petition to supersede the Commission, this was adjudged to be no Contempt, nor a sufficient Cause to supersede the Commission, because the Order of Reference extended only to bringing Actions, and common and ordinary Proceedings. *Mich. 1728. Anonymus, Mosely's Rep. 27.*

Mr.

Mr. *Atwood's* Bill by an Order of Court, On the Client's Neglect was referred to the Master to be taxed. And to attend the Master on the Taxation of the Solicitor's Bill, the Lord Chancellor would not order him to bring the Money into Court, but only made an Order, that the Order of Reference should be discharged, if he did not procure a Report in a Fortnight. *Mich. 1728.*

*Anonymus, Mosely's Rep. 68.*

By the Decree in this Cause, the Money recovered was brought into Court, and put out for the Benefit of the Infants the Plaintiffs, and the Defendant was to pay Costs, and he being run away, the Solicitor for the Plaintiffs moved the Court to have his Bill of Costs paid out of this Money which was lodged in Court, and insisted, a Solicitor was always considered to have a Lien on the Money recovered, because it was by his Means, and at his Expence. The Defendant who was decreed to pay Costs, being run away, and the Prochein Amy poor, the Solicitor was paid his Bill of Costs out of Money lodged in Court, for the Benefit of the Plaintiffs during their Infancy.

I  
with



with some Reluctance. *Pasch. 1730. Stains v. Maddox, Mosely's Rep. 319.*

The Order of Taxation impowers the Master to examine the Solicitor as to his Receipts only, but you may have an Order on proper Affidavits, for the Master to examine him to his Disbursements.

The usual Order was made, that Mr. Haywood a Solicitor's Bill should be taxed by a Master, and he be examined on Interrogatories what Money he had received; and it was now moved, that he should be examined on Interrogatories what Sums he had paid to Counsel, and other Persons, on Affidavit of his having charged several *Items* which the Party himself had disbursed; and the Lord Chancellor seemed very unwilling to break in upon the usual Course of the Court, but made an Order, that the Master, in the Course of the Taxation, might if he thought proper, examine him on Oath, to any *Items* contained in the Affidavits, but not to any other.

But afterwards, on a Motion to the Master of the Rolls, a general Liberty was given to the Master to examine him on Oath; and his Honour said, he thought it very reasonable, he should be obliged to clear up every Thing in that Manner. *Trin. 1730. Anonymus, Mosely's Rep. 331.*

A Country Client employs an Attorney or Solicitor in the Country in a Cause in Chancery, the Solicitor employs

Mr. Farewell employed one Bower of — in *Somersetshire*, as his Solicitor in a Cause in Chancery, and Bower the Solicitor employed Mr. Walter Edwards as his Clerk in Court.

Mr. Farewell paid Bower at several Times about 800*l.* which he alledged was more than was due to him upon his Bill. Mr. Bower a Clerk in Chancery, the Client in the Country pays his Solicitor, but the Clerk in Chancery is unpaid. The Client not bound to pay the Clerk in Chancery; but if the latter has any Papers in his Hands, he may retain them.

died,

died, and his Widow administred to him. Mr. *Edwards* the Clerk in Chancery's Bill continued unpaid, and he delivered out several Papers, Copies of Depositions, and Orders to other Solicitors for the Use of *Farewell*, in order to an Issue in this Cause.

Mr. *Farewell*, on Petition got an Order to tax *Bower's* Bill, alledging it was overpaid, upon which *Edwards* got an Order *ex parte* from the Master of the Rolls, to stay the taxing of the Bill and all Proceedings till his Bill be paid.

On Petition to the Lord Chancellor to set aside that Order, many Things were urged, as that the Clerk in Court was the Sworn Clerk, and to be taken Care of by the Court as their Officer; that even at the Hearing of the Cause, the Lord Chancellor has stopped the same from proceeding, on the Clerk in Court's insisting to be paid, or secured his Bill; and that it is at the Peril of the Country Client, to enquire and stop Money for the Payment of the Clerk in Court, to whom both the Country Solicitor and Country Client are at Stake.

Lord Chancellor: The Client in the Country employs only the Attorney or Solicitor in the Country, and knows nothing of the Clerk in Court, where it is a Cause in Chancery, or of the Entering Clerk, where it is a Cause at Law; and on the other Hand, the Clerk in Court, or Entering Clerk, being (generally) perfect Strangers to the Country Client, give Credit to the Attorney or Solicitor in the Country only; so that if the Country Client

pays his Principal who is the Country Attorney or Solicitor, he is thereby discharged, and must not pay the same Debt twice.

All I can do for the Clerk in Court is, to take no Paper out of his Hands till paid; and if any Thing be remaining due in Mr. Farewell's (the Country Client) Hands, I will stop it, and the same shall be paid to Edwards the Clerk in Court. Also here being some Proofs by Affidavits of Farewell's retaining Edwards to take Care of the Cause, let that be tried in an Action at Law to be brought by Edwards against Farewell. *Pasch. 1728. 1 P. Williams 460.*

## CHAP. VII.

*Of the Misdemeanors, Offences, and Errors for which the Attorney is punishable; and of the Form of the Proceedings against him.*

Style 426.

Cro. Car. 52,

74.

6 Mod. 16,

187.

4 Mod. 367.

**A**TTORNIES are Officers of the Court, and liable to be punished in a summary Way, either by Attachment, or having their Names struck out of the Roll of Attornies, for any ill Practice, attended with Fraud and Corruption, and committed against the obvious Rules of Justice and Common Honesty: But the Court will easily be prevailed on to proceed in this Manner, if it appears that the Matter complained of was rather owing to Neglect



Neglect or Accident than Design; or if the Party injured has other Remedy provided by Act of Parliament, or Action at Law.

But if an Attorney takes upon him to prosecute or defend a Suit for another, without any manner of Directions from him, the Court will grant an Attachment against him. 38 *Ed. 3. 8. b. Rastal 582.*

A Person taking upon himself to prosecute <sup>2 Hawk. P.C.</sup> or defend any Action who is no Attorney, is <sup>144.</sup> liable to be punished, whether he had any Directions or not.

Attornies are also punishable for base and <sup>Rastal 93. pl.</sup> unfair Dealings towards their Clients in the <sup>3.</sup> Way of Business, as for protracting Suits by <sup>2 Hawk. P.C.</sup> little Shifts and Devices, and putting the Parties to unnecessary Expences in order to raise their Bills, or demanding Fees for Business that never was done, or for refusing to deliver up to their Clients Writings, with which they had been intrusted in the Way of Business, or Money which has been recovered and received by them to their Clients Use, and for other such-like gross and palpable Abuses. <sup>144.</sup>

But the Court will seldom grant an Attachment for the Detainer of such Writings or Money, without first making a Rule on the Attorney, to deliver them to the Party: Also it will justify an Attorney's detaining such Writings or Money for his Security, till he be paid all his just Fees; nor will it ever interpose in this Manner, as to any Writings or Money received by an Attorney on any other Account, except only in his Way of Business as an Attorney, but will leave the Party to his ordinary Remedy by Action. <sup>1 Salk. 87.</sup>

Cro. Car. 74.  
Dyer 241.  
pl. 50. 244.  
pl. 58.  
Fitz. Attach-  
ment 3, 7.

Attornies are punishable for disobeying the Rules of Court, of which they have Notice, either expressly or impliedly; also for forging a Writ, or any other Matter of Record, or but attempting to do it, or for taking out a *Capias* which has no Original to warrant it, or for receiving Money of a Client for suing out an Original, and also for the Fine due thereon to the King, where in Truth no Original was sued out, nor any Fine paid to the King, or for endeavouring to impose upon the Court, as by causing an Action to be brought against one in it, by Collusion, without any just Ground, in order thereby to intitle the Party to the Privilege of the Court, and afterward, upon the Examination of the Matter in Court, giving a false Account of it, or for giving Directions to a Sheriff concerning what Person he should return on a Panel.

Hob. 9, 117.

An Attorney must not be guilty of any undue Practice; therefore, if he cause another Attorney to appear on the other Side, and confess the Action which he began, he is punishable; so if he follow a Cause to be paid such a Sum in gross, when the Thing is recovered, this is *Champerty*.

2 Roll. Rep.  
459.

In Trespass against the Defendant for breaking a Beam; the Defendant justified, for that he was an Officer, and for that the Plaintiff sold Goods by this false Beam, he (the Defendant) by the Command of a *Justice of Peace* did break it; the Plaintiff replied, and traversed, that *he sold falsely by the Beam*; upon which they are at Issue at the *Nisi prius*, and they having each of them an Attorney, the Plaintiff did not proceed, but retained one

*Suliard* another Attorney, who altered the Paper-Book, by putting in a new Plea, without Motion or the Defendant consenting, and traversed, that *the Beam was false*; of which the Defendant having Notice, took out a Writ of Inquiry; and upon a Motion to punish the Attorney for this Abuse, the Chief Justice was of Opinion to strike his Name out of the Roll.

An Attorney prosecuted three several Actions of Debt, every one of them being above 40*l.* and so a Fine was to be paid to the King in each Action, and he entred Judgments on all of them; there were no Originals sued forth, but the Attorney had received the Charges, as if they had been sued forth; and also the *Fines* due to the King: Adjudged, that this being voluntary, and against his Oath, which is *that he shall not practise any Deceit*, he shall be put out of the Roll of Attornies, and be cast over the Bar, and committed to the *Fleet*. Cro. Car. 52.

Where Writings come to an Attorney's Hands by Way of his Business as an Attorney, the Court, upon Motion, will make a Rule for him to deliver them; but where they come to him in any other Manner, the Party must bring his Action. 1 Salk. 87.

A Writ against *Husband and Wife* being brought to an Attorney, he undertook to appear for both, but afterwards he refused; then the Plaintiff delivered a Declaration, which the Attorney received *de bene esse*, and Judgment was entred for Want of a Plea; the Court set it aside, and committed the Attorney; for if he once undertake to appear, and afterwards 1 Nelf. Abr. 293.



wards refuseth, upon a Summons before a Judge, he will be compelled to appear.

Attorney ordered to pay the Costs, where no Plaintiff to be found.

The Plaintiff's Attorney was summoned before Mr. Justice *Fortescue* to produce his Client; and the Judge thereupon made an Order, that unless he was produced in a Month, the Defendant should, by Consent, be at Liberty to sign a *Non pros*. He did not produce him, and the *Non pros* was signed: And upon an Affidavit, that we could find no such Man as the Plaintiff, the Court, on my Motion, made a Rule upon the Attorney to pay Costs; and afterwards, upon an Affidavit that they were demanded and unpaid, I moved for an Attachment against him; which was ordered accordingly. *Stran.* 402.

Defendant's Attorney ordered to give Plaintiff a Copy of Proceedings lost.

The Plaintiff's Attorney sent the Issue back to the Defendant's, who accepted it and paid for it; but the Plaintiff not going on to Trial, the other Side gave him a Rule to enter his Issue, in order to carry down the Cause by Proviso. And upon an Affidavit that the Plaintiff's Attorney had mislaid the Papers, the Court ordered the Defendant's Attorney to give him a Copy of the Issue, the better to enable him to comply with the Rule. *Stran.* 414.

Replication  
*non est Attorn*,  
must not conclude *al pais*.

In C. B. the Defendant, after Special Imparlance, pleaded his Privilege of an Attorney of B. R. The Plaintiff replied him not an Attorney, and concluded to the Country; and on Demurrer, Judgment in Chief is entred for the Plaintiff, but reversed on Error; because being on Demurrer, the most the Plaintiff could have was a *Respondeat ouster*. *Et per Curiam*, that there must be in this Case, because though

though the Replication is ill in concluding to the Country, yet the Plea is ill too, as coming after an Imparlance, though it be a Special one.

*Strange* 532.

*Hacket* agreed to assign a Lease to *Sutton*, who sent for *Dottin* an Attorney, to take the Deeds and peruse them. *Dottin* drew an Assignment, and then *Sutton* paid him for it, and took back the Deeds; and now *Hacket* moved for a Rule on *Dottin*, to deliver him the Deeds. But upon laying the Case before the Court, they would make no Rule upon the Attorney, it appearing to be a fair Transaction in delivering back the Deeds to his own Client.

*Stran.* 547.

Mr. *Strong*, who had a Mortgage on the Estate of Mr. *Howe*, had deposited the Writings in the Hands of his Counsel, who, upon a Proposal to pay the Money, delivered the Writings to Mr. *Howe's* Brother, who was an Attorney, and took a Receipt from him to re-deliver them upon Demand. Mr. *Howe* the Attorney, intrusted them with the Mortgagor, who immediately took up 200*l.* and left the Writing as a Pledge without the Privy of his Brother. And now upon Motion against the Attorney, the Court made a Rule on him to re-deliver the Writings at his Peril, otherwise an Attachment: For they said, they would oblige all Attornies to perform their Trust; and how hard soever this might be, as between him and his Brother, yet between him and Mr. *Strong* it stood only upon the Note, by which he had engaged to return the Writings in all Events. *Stran.* 621.

In what Cases the Court will order an Attorney to deliver Deeds.

Attorney ordered by Rule to deliver Writings.

Case,

1 Rol. Rep. 3.  
Hudson *vers.*  
Hancock.

Case, &c. against an Attorney, in which the Plaintiff declared against him as *Clerk*. After a Verdict for the Plaintiff, it was objected in Arrest of Judgment, that the Declaration is ill, because of the Addition of *Clerk*, when it should be against such a one *Attornatum*, &c. for Attornies are of Record, as it appears by antient Records in the Tower, before the Reign of *Hen. 7.* But the Plaintiff had Judgment.

The Course of  
Proceedings  
against an  
Attorney.

The Defendant was an Attorney of this Court, and lived 100 Miles off; the Plaintiff filed a Bill against him, and sent it him down, and at the same Time served him with a four Days Rule to plead; now the Counsel said, that it was impossible for him to plead within that Time, and yet the Plaintiff immediately after the Time signed Judgment. The Defendant ordered his Agent to plead the general Issue for him as soon as possibly he could; and therefore the Counsel moved, that this Judgment might be set aside. But the Court said, the Judgment was regular, and therefore they could not do it. And Judge *Page* said, that Attornies of this Court are always here by themselves or their Agents. *Mich. 2 Geo. 2. 1728. Lamb and Ross, 1 Barnardist. K. B. 90.*

Persons con-  
victed of For-  
gery, &c.  
practising as  
Attornies, &c.  
offending  
against this  
Act, to be  
transported.

Stat. 12 Geo. 1. c. 29. s. 4. And for avoiding the great Mischiefs and Abuses, which arise from infamous and wicked Persons, already convicted of wilful Perjury or Forgery, practising as Attornies or Solicitors in Courts of Law and Equity; Be it enacted, That if any Person, who hath been, or who shall be convicted of Forgery, or of wilful and corrupt Perjury or Subornation of Perjury, or common Barretry, shall act or practise as an Attorney,  
or



or Solicitor, or Agent, in any Suit or Action, brought or to be brought in any Court of Law or Equity, within that Part of *Great Britain* called *England*; the Judge or Judges of the Court, where such Suit or Action is or shall be brought, shall, upon Complaint or Information thereof, examine the Matter in a summary Way in open Court; and if it shall appear to the Satisfaction of such Judge or Judges, that the Person complained of, or against whom such Information shall be given, hath offended contrary to this Act; such Judge or Judges shall cause such Offender to be transported for Seven Years, to some or one of his Majesty's Colonies or Plantations in *America*, by such Ways, Means, and Methods, and in such Manner, and under such Pains and Penalties, as Felons in other Cases are by Law to be transported.

Serjeant *Umlin* moved, that the Defendant's Attorney might shew Cause, why he did not deliver up 100*l.* which was delivered him as an Indemnity against all Damage that he might suffer by becoming Bail. The Plaintiff had given the Defendant a general Release, and yet the Attorney refused to deliver up the Money. The Court said, they did not see how a Rule could be made upon him to do this; because in this Respect he did not act as an Attorney. However, a Rule was made upon him to shew Cause why he should not consent. *Mich. 5 Geo. 2. 2 Barnardist. K. B. 34.*

How far the Court cannot proceed in a summary Method against an Attorney.

A Rule

When a Client intrusts his Attorney with a Deed, and the Attorney happens to lose it by Accident, how far the Court will grant an Attachment against him.

A Rule had been made upon *Churcher*, the Plaintiff's Attorney, to shew Cause why he should not deliver back a Counter-Part of a Lease, which the Plaintiff had delivered him, in order to bring an Action of Covenant against the Defendant. Mr. *Strange* came now to shew Cause, and said that the Attorney had some way lost this Deed by an unavoidable Accident; but that the Plaintiff was not without Remedy; for he might bring a Bill of Discovery against the Defendant, to make him set out, whether there was not such a Lease, and what the Lease was. He said, he had agreed that the Attorney ought to be at the Costs of this Discovery; but yet, as the Circumstances of this Case were, he submitted it, the Court would not proceed in this Way against him by an Attachment. Judge *Page* said, that he remembred the Court of Exchequer did proceed in this summary Way against an Attorney that had his Pocket picked of the *Postea*, which he was carrying to *Lincoln's Inn*. He said, that he thought the Attorney himself ought to procure a Discovery of this Deed by a Bill in Chancery; but on the other Hand, that the Plaintiff should allow him to make use of his Name for that Purpose. Accordingly the Court granted an Attachment against him; but ordered it to lie in the Officer's Hand, 'till further Direction given. *Pasch. 6 Geo. 2. Court and Gilbert, 2 Barnardist. 263.*

Mr.

The Defendant having been committed for want of a Plea.

**Affidavit** was made, that the Defendant gave the Plaintiff a Warrant of Attorney to confess a Judgment; the Plaintiff gave his Attorney a Guinea for drawing it, and two Guineas for entering it up. Notwithstanding this, the Attorney took no Care to do it, and the Defendant has been now dead near a Twelvemonth. Upon which the Court made a Rule to shew Cause why an Attachment should



should not go against him. *Mich. 2 Geo. 2. 1728. Garner and Lauson, 1 Barnardist. 101.*

The Course of Proceedings in Actions brought against an Attorney.

Motion was made, that an Eight Day Rule might be enlarged for executing a Writ of Inquiry in Town, upon Account of the Defendant's living above 100 Miles off in the Country. But the Court refused the Motion, because the Defendant appeared to be an Attorney of the Court, and by that was supposed to be always attending here. *Mich. 4 Geo. 2. 1730. 1 Barnardist. K. B. 403.*

When an Action is brought upon an Attorney's Bill, what Evidence must be given in order to support such Action.

In an Action brought by an Administrator to recover an Attorney's Bill, it was objected at *Bury Assizes*, that Evidence ought to be given of the Bill's being tendred to the Defendant before the commencing of the Action. But Judge *Page* held it not material. Accordingly no Evidence of that Sort was produced. *Hil. 4 Geo. 2. 1730. Spink and Hare, 1 Barnardist. 433.*

Whether Attornies are within the Statute against Extortion, or not.

An Information of Extortion against *Froy* an Attorney. It was moved in Arrest of Judgment, that Attornies are not within any of the Statutes against Extortion, and therefore the Information concluded ill, the Conclusion being *Contra Formam Statuti*. *Twisd.* The Statute of 3 *Jac. c. 7.* is exprefs against Attornies. *Kel.* I think as thus advised, that Attornies are within all the Statutes of Extortion. It was afterwards moved in Arrest of Judgment, that the Information was insufficient in the Law: For Sir *Thomas Fanshawe* informed, that Mr. *Froy*, being an Attorney of the Court of Common Pleas, did at *Maidstone* cause one *Collop* to be impleaded for 9s. 4d. Debt, at the Suit of one *Dudley Sellinger, &c.* and

and this was *ad grave Damnum* of Collop, &c. but it is not expressed in what Court he caused him to be impleaded; and that which the Defendant is charged with is not an Offence; for he saith that he did cause him to be impleaded, and received the Money the same Day, and perhaps he received the Money after he had caused him to be impleaded: Then it is not sufficiently alledged, that he had *illicite* received so much; and Extortion ought to be particularly alledged. Nor is there any Statute, that an Attorney shall receive no more than his just Fees. The Profession of an Attorney is at Common Law, and allowed by the Statute of *Westm. 1. c. 26.* and the Statute of 3 *Jac.* does not extend to this Matter. *Non constat* in this Case, if what he received was for Fees or not. Besides, the Suit for an Offence against the Statute must be brought by the Party, not by Sir Thomas Fanshawe. *Kel.* If the Party grieved will not sue for the Penalty of treble Damages given by that Statute; yet the King may prosecute to turn him out of the Roll. *Twisd.* I doubt that: for is it clear, whether an Information will lie at all upon that Statute or not? for the Statute does not speak of an Information. *Kel.* Whenever a Statute makes a Thing criminal, an Information will lie upon the Statute, though not given by express Words. *Twisf.* It appears here, that this Money was not received of his Client; for he was against Collop. But he ought to shew in what Court the Impleading was; for otherwise it might be before Mr. Major in this Chamber. To which the Court agreed. So the Information was quash'd. 1 *Mod.* 5.

An

An Action lies not against an Attorney for suing in a Cause as Attorney, knowing that the Plaintiff has no Cause of Action.

An Action was brought against four Men, viz. two Attornies and two Solicitors, for being Attornies and Solicitors in a Cause against the Plaintiff in an inferior Court, *falso & malitiose*, knowing that there was no Cause of Action against him; and also, for that they sued the Plaintiff in another Court, knowing that he was an Attorney of the Common Pleas, and privileged there. *Per tot' Cur'*: There is no Cause of Action; for put the Case as strong as you will: Suppose a Man be retained as an Attorney to sue for a Debt, which he knows to be released, and that himself were a Witness to the Release; yet the Court held, that the Action would not lie; for that what he does, is only as Servant to another, and in the Way of his Calling and Profession; and for suing an Attorney in an inferior Court, that (they said) was no Cause of Action; for who knows whether he will insist upon his Privilege, or not? And if he does, he may plead it, and have it allowed. 1 Mod. 209.

Action brought against an Attorney for appearing without a Warrant.

An Action was brought against Squire an Attorney, and two others, for appearing for the Plaintiff without a Warrant. The Cause was carried down to be tried at the Assizes; and the Defendant did promise, that in Consideration the Plaintiff would not prosecute the Action, that he would pay 10*l.* and Costs of Suit; and an Action was brought against the Defendant upon this Promise.

The Question was, Whether this was a void Promise by the Statute of Frauds, being made in Behalf of another, and not in Writing? Which Statute enacts, *That no Action shall be brought to charge the Defendant upon any Special Promise*



*Promise to answer for the Debt, Default, or Miscarriage of another Person, unless it be in Writing.*

But the Court were of Opinion, that this cannot be said to be a Promise for another Person, but for his own Debt, and therefore not within this Statute. *Pasch. 8 Will. 3. Stephens vers. Squire, 5 Mod. 205.*

A Trial at Bar was appointed in this Case on *Wednesday* the 12th of *November*; and the Day before the Trial, the Plaintiff moved to put it off, because he wanted a Witness to prove a Deed. Attorney committed for not bringing in his Writ of *Distingas* into Court.

The Court denied the Motion; thereupon the next Day the Attorney refused to bring in the Writ, it being only a Contrivance of him to prevent a Nonfuit.

But the Court ordered the Roll to be brought in, that they might take Notice there was such a Writ; and the Counsel of the Defendant informed them, that my Lord Chief Justice *Hale* had committed an Attorney for the like Practice; which was likewise done now. *Mich. 6 Will. 3. Ma. Jones vers. Comitam Bath, 4 Mod. 367.*

A Petition was exhibited against *S. Mason*, An Attorney and Articles alleged and proved, *inter alia*, Ambidexter committed and struck out of the Roll. that he had been an Ambidexter, viz. After he was retained by one Side, he was retained on the other Side; and for this was committed to the *Fleet*, and turned out of the Court. He was prosecuted by Sir *John Huit* and others. *Trin. 1673. Freeman 74.*

Whether an  
Attorney's  
laying out  
Money for his  
Client be  
Maintenance.

Debt upon an Obligation. The Condition was, If the Defendant did pay all Monies that the Plaintiff had expended in a Suit between A. and B. wherein he was Attorney, and all that he should expend in the Prosecution of the said Suit; that then, &c. To this the Defendant demurs generally.

Broome *pro Def.* said, that the Bond was void, for the Condition was against Law, being for Maintenance: And that this is Maintenance appears by 1 *Inst.* 368. b. where one maintaineth the one Side, without having any Part of the Thing, it is Maintenance; and there is no Difference between paying Money towards it, and giving Bond to pay it; and cited 42 *Ed.* 3. 6. b. *Bro. Obligation*, ff. a Case in Point. Turner *pro Quir.* argued, that the Bond is good; for it is lawful for an Attorney to lay out Money for his Master, and he to pay him again, 2 *Inst.* 364. and if so, then he may take his Promise, or his Bond for it; to which the Court assented. 2 *Cro.* 520. *Hob.* 67, 117. Where there is a certain Sum promised, perhaps it may be unlawful; but if it be for his due Fees, it is otherwise. *Style* 134. *Per Rolle*: That which an Attorney doth by his Client is Maintenance, but it is lawful Maintenance. But here it is objected, that the Obligors are Strangers to the Suit. *Ans.* If the Party be a poor Man, and the Attorney will not trust him, certainly he may get his Friends to be engaged with him for the Money he shall lay out; but however, it cannot be denied but Part of the Condition, *viz.* to pay what he had already laid out, is good

good enough; and Part being good, and Part void, it should not be void for all, unless it were where a Bond is made void by Statute; and that Difference is taken, *Hob. 14.* The Court did incline to think that it was Maintenance in the Strangers; for else they said, the Statutes of Maintenance would be easily eluded, and People might maintain very securely, by giving Bond; which would be altogether as great an Evil as laying out Money; and they the rather inclined to it in this Case, because here the Party to the Suit was not bound with them, but they were three Strangers.

*Mainard ut Amicus Curie dixit*, that it had been adjudged Maintenance, for a Man to speak to a Counsel, or an Attorney to encourage the Suit wherein he had no Interest; and that the Master might maintain for the Servant, but not the Servant for the Master. *Sed Curia advisare vult. Hil. 24 Car. 2. 1672. Freeman 71.*

Afterwards in *Easter Term*, the Plaintiff had been Solicitor for the Defendant in several Suits, and an Obligation was given by three others, to pay all such Sums of Money as are or should be laid out by the Plaintiff in the several Suits depending for the Defendant, wherein the Plaintiff was Solicitor, &c. The Plaintiff declares upon this Obligation, and the Defendant demurs.

It was argued for the Defendant, that this Obligation was void, being for Maintenance; and though it had been objected, that Part being given for what was already due was lawful, and so however it should be good for that: Yet it was argued by *Broome*, that the



Whole taken together was Maintenance; for the securing of what he had laid out, and what he should, does give Life and Spirit to the Attorney to sue, and so according to 1 *Inst.* 363. *b.* a Bearing up, or Upholding of Quarrels and Sides; and whereas it hath been objected, that it may sometimes be an Act of Charity to be Security for a poor Man, because it may be a Means to help him to the Recovery of his Right: As to that, the Law hath provided a Remedy for him, for he may be admitted *in Forma Pauperis*; and therefore, upon the whole Matter, this seems to be a supporting of Quarrels, and is an Encouragement to one Part, and a Discouragement to the other.

*Turner pro Quer.* argued *ut prius*; and said farther, that it did not appear here that any Maintenance was committed; and so it is not Reason the Party should suffer, *Non officit conatus nisi sequatur effectus*: But *Vaughan* answered to that, that it was true, that the Party could not be indicted for Maintenance till it were committed; no more could he for Murder; but yet, if a Bond be given to maintain, or to kill, certainly the Bond will be void, tho' the Acts never ensue; and he said it will be hard to distinguish, in Point of Maintenance, between giving of Money and giving Security for it.

*Windham*: As the Defendant hath pleaded, it seems to be something strong against him; for there is a Difference when the Condition is to do a Thing that is plainly unlawful in it self *prima Facie*, as to kill a Man, &c. and when it is to do a Thing that may be either lawful

lawful or unlawful, according to the Circumstance of the Thing, as it is here; so there may be lawful Maintenance; and *non constat* here, whether or no the Obligors were not Relations of the Party, or perhaps the Party might be Lessee, and they might be Reversioners; and therefore the Defendant should not have demurred, but should have pleaded that the Bond was for Maintenance, and then it had come properly on the other Part to have shewed how, and upon what Account they might lawfully maintain, *ut prius*; but now the Defendant had tied the Plaintiff up by his Demurrer, that he could not come in to shew the Matter.

*Atkins* took a Difference, that if the Suit were ended, any Person might be Security for the Fees and Charges expended, but not while the Suit was depending; for the Security for what was laid out, did encourage the proceeding in it; and the Judges ought to discountenance any Thing like Maintenance. *Non bene ripis creditur.*

It was agreed by all the Judges, that the Client himself might give the Attorney Bond for his Fees; or that, after the Suit is ended, any Body else might be bound with him for Security of what was laid out. *Sed Curia advisare vult.*

Afterwards, in this same Term, *Vaughan* Chief Justice, delivered the Opinion of the Court, that Judgment ought to be given for the Plaintiff, because the Defendant demurring generally, it cannot appear whether the Maintenance was lawful or unlawful; and it might be, that these Persons were Relations

that might lawfully maintain; and *Nullum Iniquum in Jure præsumitur*; and besides, he ought to have pleaded Performance of that Part, which was lawful; for it was lawful to be Security for what had been laid out before; for though it was a Question formerly, whether an Attorney might lay out his proper Money for his Client, yet now it was made clear that they might, since the Statute 3 Jac. *Idco per Curiam Jud. pro Quer.* Freeman 81.

Attorney fore-  
judged not to  
be sued by  
Bill.

Defendant being sued as an Attorney by Bill, pleads in Abatement that he is not an Attorney. Plaintiff moved to set aside the Plea, and had a Rule to shew Cause; but it appearing on shewing Cause, by Certificate from the Clerk of the Warrants, that the Defendant was forejudged five Years ago, and that Forejudger still remains in Force; the Rule was discharged. *Per Cur.* Defendant is totally deprived of Privilege, pending a Forejudger. Plaintiff may reply as he pleases, and traverse the Fact, which is triable by the Record, or demur if he thinks the Plea bad. The Plea is sworn to be true, and seems not to be frivolous. 1 Barnes 36.

Attorney to  
pay Costs on  
both Sides for  
many Blunders  
in a *Capias*.

*Capias* returnable *tres Mich.* Notice to appear *October 20.* without saying next; Writ dated *August 22.* not cured by Plaintiff's entering the Appearance, because the Notice to appear is defective. Defendant may apply any Time before Judgment. Many Blunders were made in the Copy of the *Capias*. Let Plaintiff's Attorney shew Cause why he should not pay Plaintiff and Defendant their Costs, occasioned by his Mistakes. *Skinner* for Plaintiff; *Hayward* for Defendant. 1 Barnes 302.

Court



Court was moved against *Phelps*, Defendant's Attorney, for not acquainting Defendant that he had received Notice of Trial, whereby Plaintiff obtained a Verdict without Defence. It appeared upon shewing Cause, that this Omission was entirely owing to the Neglect of Mr. *Buckle*, Agent for *Phelps*: But the Court held that to be no Defence for *Phelps*, he is answerable to his Client, his Agent to him. The Party in this Case ought not to be put to his Action, but the Matter should be determined in a summary Way. Let an Attachment go against *Phelps*. 1 *Barnes* 30.

Attorney in the Country answerable for Agent's Mistakes.

One *Barnes*, an Attorney in Cumberland, had Orders from a Defendant to plead for him; and he sent Directions to Mr. *Eadnell*, his Agent, so to do; but *Eadnell* neglecting to plead, Judgment passed against Defendant by Default. Defendant moved against *Barnes*, and a Rule was made upon him to shew Cause why he should not make Defendant Satisfaction, he being answerable for his Agent's Default. Upon shewing Cause, it appeared there was a just Debt due to Plaintiff of 44*l.* and the Costs, (had a Plea been pleaded,) would have been greatly increased, so that Defendant is benefited, and not prejudiced by suffering Judgment to go by Default. If Defendant could have made a just Defence, and no Debt had been due, in Case of a gross and wilful Neglect, the Court would have punished the Attorney; but there's no Reason for it in this; Rule discharged. *Chapple* for Defendant; *Brick* for *Barnes*. 1 *Barnes* 32.

Attorney, letting Judgment go, having Orders to plead, not punishable if a just Debt.

Rule for an Attorney to shew Cause why he should not be struck off the Roll, on Complaint that he had imposed on the Judge who admitted him by false Suggestions, discharged with Costs, being fully answer'd.

Proceedings against an Attorney in an Action *qui tam* commenced by Original, irregular, and staid.

A Complaint having been laid before the Court against *Allen*, shewing that he had imposed on the Judge who ordered him to be admitted, by swearing to Service of five Years to an Attorney of *Newcastle under Lyne, Com. Staff.* as an articled Clerk, tho' (as suggested) he never lived at *Newcastle*, but constantly resided at *Loughborough, Com. Leic.* where he was an Under-Schoolmaster, and Collector of the Window-Light Duty; a Rule was made for *Allen* to shew Cause why he should not be struck off the Roll of Attornies; on shewing Cause, the Complaint was fully answered. It appeared, that tho' *Allen* resided sometimes at *Newcastle* and sometimes at *Loughborough*, he was during his whole Clerkship, constantly employ'd and instructed by his Master. The Rule discharged, with Costs. *Hayward, Boole, and Poole* for *Allen*; *Prime, Willes*, and *Belfield* for *Boyer* and others. 2 Barnes 42.

This was an Action brought on a penal Statute (13th *Elizabeth*) against Defendant, for entring a fraudulent Judgment; and the Suit being by Original and *Capias ad respondendum*, Defendant, who was an Attorney of this Court, *Rectus in Curia*, moved to stay the Proceedings, insisting that he ought to be sued by Bill. On shewing Cause it was urged, that this was a Prosecution for the Crown; and that Defendant, if intitled to Privilege, may plead it. But *per Cur'*: These *Qui tam* Actions are never considered as the King's Causes. In Prosecutions at the Suit of the Crown, Defendants, tho' acquitted, can have no Costs; but in Actions *Qui tam* 'tis otherwise. The Proceeding by Original is irregular. Rule absolute

solute to stay Proceedings. *Prime* for Defendant; *Willes* and *Agar* for Plaintiff.

On Complaint of one of Defendant's Bail, of his having been made liable to pay Plaintiff's Debt and Costs, by a Prosecution on the Bail-Bond, through the Misconduct of Mr. *Skinner*, an Attorney employ'd for Defendant, who had put in Bail in the Court of King's Bench, instead of this Court; and it not being controverted by *Skinner's* Counsel, for Want of proper Instructions, that he was an Attorney of this Court, a Rule was made absolute upon him to reimburse the Bail; but it afterwards appearing that *Skinner* was not an Attorney of this Court, and that he never acted by himself, or in the Name of another Attorney, in any one Instance in this Cause in this Court, the Rule was discharged. *Prime* and *Poole* for *Skinner*; *Hayward* for the Bail. 2 *Barnes* 41.

Rule on an Attorney to reimburse the Bail on the Bail Bond their Debt and Costs, which they became liable to by his putting in Bail in B. R. discharged, he not being an Attorney of this Court, nor ever practised in it.

After a Verdict found for the Plaintiff, several Objections were made in Arrest of Judgment: The principal were, that tho' the Action was Trespass upon the Case, the *Jurata* at the Foot of the Record of *Ni. pri.* was in Trespass only; that instead of saying, unless the Chief Justice should come before on the 12th of *July*, that two of the Defendants being Sheriff of *Middlesex*, the *Ve. fac.* was awarded to the Coroners, but by the *Jurata* the Writ was alledged to be delivered to the Sheriff to be executed: That the Writ of *Ve. fac.* instead of being made returnable in Court, was made returnable before the Chief Justice. And that the Declaration recited an Original against *James Brooke* and others, and counted against the said *John Brooke*. As to the first Objection,

Attorney for many gross Blunders ordered to pay Costs.



Objection, the Court held it to be helped by the Statute of Jeofails. As to the second Objection by the Writ of *Ha. Cor. Jur.* the Day of Trial was rightly appointed, and the *Jurata* is amendable by the Writ. As to the third Objection, the *Ve. fac.* appeared to be returned by the Coroners, and the *Jurata* is only wrong by Misprision of the Clerk; the Return of the *Ve. fac.* tho' defective, is within the Statutes of Amendment. And as to the last Objection, the Word *John* in the Declaration must be rejected, and then the Count will stand against the said *Brooke*, which must be the *James Brooke* before mentioned. The several necessary Amendments were ordered, and thereupon the Rule to stay the Entry of final Judgment was discharged, and the Plaintiff's Attorney, who had made so many gross Blunders, was ordered to pay Costs. *Prime* and *Draper* for Defendants; *Wynne* and *Agar* for Plaintiff. 2 *Barnes* 3.

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## C H A P. VIII.

*Of the Privileges which an Attorney has.*

**A**T TORNIES have Privilege not to be sued in any other Courts except those in which they are sworn and admitted, because of the Prejudice that may accrue to the Business of those Courts in which their Attendance is required; neither are they to be held to  
Special

Special Bail, because they are obliged to attend, and therefore are presumed to be always amenable; also as Officers of the Court they are intitled to the Process of Attachment, and may sue by Attachment of \* Privilege.

Also if an Attorney of any of the Courts of *Westminster-Hall* be chosen Constable, he may have a Writ of Privilege for his Discharge; for his Attendance being necessary in those Courts, it is apparent that he cannot execute any inferior Office in Person; and this Privilege he shall have, not only where there is no special Custom concerning the Election of Constables, but also where they are chosen by a particular Custom in respect of their Estates, or otherwise, for that no such Custom shall be intended to be more antient than the Usages of those Courts, and therefore shall give Way to them.† *Cro. Car.* 283, 389. *1 Vent.* 16, 29. *Noy* 112. *March* 30. *2 Keb.* 477, 508. *1 Lev.* 265. *1 Mod.* 13. *Raym.* 179.

An Attorney of *B. R.* was chosen *Tithingman* of the Town of *C.* where the Custom was, that the Inhabitants should serve that Office according to their several Houses; the Attorney thus chosen at the *Leet*, brought a *Writ of Privilege* to be exempted from executing the Office, for that he was an Attorney, &c.

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\* For Precedents of Pleas of Privilege, see *Thomp.* 4. *Rob. Ent.* 106, 178, 472. *Rast. Ent.* 106, 178, 472. *Brownl.* 161, 167, 268. *Hern.* 3. 3 *Instruct. Clericalis* 32 to 35.

† An Attorney's Clerk has no Privilege. *Comb.* 12. But this Privilege extends to Judges Clerks, and also to the Clerk of Assise.

It was objected against the Allowance of this Writ, because tho' an Attorney may generally have such a Privilege, yet where there is a *Special Custom*, that the Inhabitants shall be chosen in Courses, that Custom shall prevail against this Privilege; but adjudged, it should not; an Attorney being a Person who by his Office is to attend this Court. *Cro. Car.* 283. *Prowse's Case*.

A Writ of Privilege was allowed by the Court of Common Pleas for a *Clerk* of the *Custos Brevium* Office, to discharge him from being a Soldier, reciting, that 'tis a Custom and Privilege of that Court, that neither *Attornies* or *Clerks* of that Court shall be pressed for Soldiers, or chose to execute any Office against their Wills, but that they ought to attend the Service of the Court. *Cro. Car.* 8. *Venable's Case*.

An Attorney hath the Privilege to be sued in the proper Court where he is an Attorney, and not elsewhere, and therefore an Attorney of *B. R.* must be sued *in Custodia Mar'*; and so must a *Clerk of a Serjeant at Law* be sued in the Common Pleas, for tho' a *Serjeant* may practise in any Court, yet he is *ex officio* to attend that Court more than any other; therefore *Serjeant Hatley's Clerk* being arrested by a *Marshal's Court Writ*, he brought a Writ of Privilege, reciting, that *Serjeants at Law* attending the Court of Common Pleas, and *their Servants* waiting on them there, ought to have the Privilege to be sued in that Court; and so it was adjudged. *Cro. Car.* 59. 2 *Bulst.* 207.



Adjudged, that if an Attorney be sued by Bill of Privilege, he ought not to find Bail; but 'tis otherwise if he is sued by Original, and comes in by *Capias*. 2 *Brownl.* 134.

It was moved, that an Attorney at large, who had discontinued his Practice, might put in Special Bail; but it was denied; for he hath the same Privilege with other Attornies, and is to appear in Court *de Die in Diem*. 1 *Vent.* 1. Sir *John How* versus *Woolley*.

A Writ of Privilege was prayed for an Attorney who was a *Copyholder*, where the Custom of the Manor was, for the Homage to choose one of the Tenants to be the *Lord's Reeve*, and that he was elected; it was insisted, that to execute this Office was Parcel of the Tenure by which he held this Office, and the *Lord* should not be deprived of it by his Privilege; but yet it was allowed; for it shall be presumed that 'tis more ancient than the *Tenure*, but at least it shall be preferred before it, because the Office of an Attorney concerns the Administration of Justice; and therefore an Attorney shall not be amerced for not attending the *Lord's Court*, at such a Time as his Attendance is required in *Westminster-Hall*. 1 *Vent.* 16, 29. *Stone's Case*.

An Attorney of the Common Pleas sued as an Administrator, by a Bill of Privilege, and an Exception was taken to it; for that in such Case his Privilege is not to be allowed, because he sues not in his own Right, but in the Right of another, and therefore he must sue by Original; and the Court was of that Opinion. *Hob.* 177. *Gage's Case*.

A Chan-

A *Chancery Clerk* married an Executrix to her former Husband, and the Clerk and his Wife being sued in the Court of Common Pleas, he demanded his Privilege by Writ, to be sued in the *Chancery*, but it was not allowed, because his Wife was joined in the Action, and she could not have the Privilege, therefore her Husband shall not. *Godb. 10. Pool's Case.*

An Attorney or Officer hath no Privilege to alter a *Venue* where he is Defendant, *aliter* where he is Plaintiff.

Mr. *Harcourt*, the Secondary of the Crown-Office, was Defendant in two Actions brought against him, and laid in the proper Counties where the Cause of Action did arise; and it was now moved to alter the *Venue*, and that the Trial might be in *Middlesex*, by Reason of the Defendant's Privilege, he being one of the Clerks of *B. R.* and his Attendance requisite and necessary here; and a Rule made in *Andrew Loder's Case* was now produced, who being one of the Clerks of this Office, had this Privilege allowed.

But the Court denied the Motion in the principal Case, because *Harcourt* was the Defendant in those Actions; and that an Attorney or Officer of the Court where he is Defendant hath no Privilege concerning the *Venue*; but where he is Plaintiff, he hath the Privilege to lay his Action in *Middlesex*, and out of the proper County; and the *Venue* shall not be changed upon the *Common Affidavit* by Reason of his Privilege; and Justice *Dolben* remembered a Cause where the *Venue* was altered upon *Affidavit*, tho' an Attorney was Plaintiff; because the Matter did arise, and all the Witnesses lived in remote Parts of the Kingdom. *Carth. 126.*

An

An Attorney, so long as he remains on Record, shall have his Privilege; and therefore where it was moved, that J. S. should put in Special Bail, being an Attorney at large, and having discontinued his \* Practice, the Court said, that Attornies at large have the same Privilege with the Clerks of the Court, and are to appear *de Die in Diem*; and they were not satisfied that he had discontinued his Practice.

But where J. S. was arrested in B. R. and after the Arrest, he procured himself to be made an Attorney of C. B. and prayed his Privilege; it was disallowed, because it accrued *pendente lite*. 2 Roll. Rep. 115.

The Plaintiff must have the same Remedy against the Officer in his own Court as in that where he sues him; for if Money be attached by foreign Attachment, in the Sheriff's Court in London, he shall not have this Privilege; because in this Case the Plaintiff would be remediless. 1 Sand. 67, 68. So if a Writ of Entry, or other real Action, be brought against an Attorney of the King's Bench, he cannot plead his Privilege; because if this should be allowed, the Plaintiff would have a Right without a Remedy; for the King's Bench hath not Cognizance of real Actions. 1 Sand. 67.

So if an Attorney of the Common Pleas be sued in an Appeal, he shall not have his Privilege; for his own Court hath not Cognisance

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\* If an Attorney absents himself for a Year, by the new Rules he loses his Privilege. 2 Lill. Reg. Per Glin Ch. J.



of this Action. For this see 38 *H. 6. b.*  
 9 *Ed. 4. 35.* *Gro. Car. 585.* 1 *Leon. 189.*  
 2 *Leon. 156.*

The Privilege which the Court indulges their Officers with, is restrained to those Suits only which they bring in their own Right, or are brought against them in their own Right; for if they sue or are sued as Executors or Administrators, they then represent common Persons, and are to have no Privilege. *Hob. 177.*  
 1 *Salk. 2. S. P.*

As where an Action was brought against an Attorney, who was Executor to J. S. who pleaded his Privilege, but was over-ruled, tho' it was urged, that there was a Difference where the Attorney was Plaintiff, and where Defendant; but the Court held it the same in both Cases. *Salk. 2. Lord Raym. 533. Newton v. Rowland.*

Also if a privileged Person brings a joint Action, this destroys his Privilege; because those with whom he joins are not Officers of the Court, nor intitled to the Attachment which the Court grants to its own Officers.  
 2 *Rol. Abr. 274.*

So if an Action be brought against a privileged Person and others, he shall be ousted of his Privilege; for if otherwise, he would destroy the Plaintiff's Action, as he would be obliged to sue the others by original Writ, and him by Petition; but some Opinions are, that this must be understood where the Action is joint in its Nature, and cannot be severed; and that if the Action can be severed without doing any Injury to the Plaintiff, the Officer shall have

have his Privilege: 14 Hen. 4. 21. 20 Hen. 6. 32. Dyer 377. 2 Rol. Abr. 274, 275. Godb. Noy 68. 2 Sid. 157. 1 Vent. 298. 2 Lev. 129. 2 Mod. 296. 1 Vern. 246.

But this Matter came fully to be considered in a late Case, where Trespass was brought in B. R. against an Attorney and another Person, the Attorney pleaded his Privilege as an Attorney of C. B. and concluded *quod non intendit quod Cur' cognoscere velit, &c.* and on Demurrer, though it was admitted that the Nature of the Action was Several, yet the Court on Consideration of the above-cited Cases held, that the Rule was General, and that the Plaintiff was not bound to bring separate Actions; and thereupon awarded a *Respondeas ouster*. Hil. 8 Geo. 2. in B. R. Pratt v. Salt.

One Fletcher was sued in the Marshal's Court, and he procured a Writ of Privilege as an Attorney of C. B. upon which the Plaintiff in the Marshal's Court surmised, that he was forejudged before, and produced the Record of his Forejudger; upon which the Marshal's Court proceeded; and upon Complaint thereof in C. B. the Court held, that the Writ of Privilege ought not to have been questioned there, but ought to have been allowed; and that if it was not duly obtained, it was a Matter examinable here; therefore all the Proceedings in the Marshal's Court were set aside, and the Plaintiff ordered to pay all the Costs of the Proceedings since the Writ of Privilege; otherwise an Attachment to issue. Hil. 26 Car. 2. in C. B. Barnes v. Fletcher.

If an Attorney or Officer of one Court sues an Officer of another Court, the Defendant shall not plead his Privilege; for the Attendance of the Plaintiff is as necessary in his Court, as the Defendant's is in his; and therefore the Cause is legally attached in the Court where the Plaintiff is an Officer. 2 *Mod.* 298. 2 *Lev.* 129. 2 *Rol. Abr.* 275. pl. 4. *Moor* 556.

An Attorney  
sued as Exe-  
cutor, shall not  
have his Pri-  
vilege.

In an Action upon Promises against the Defendant as Executor to J. S. he being an Attorney, the Defendant pleaded his Privilege in Abatement. The Plaintiff demurred. Sir *Bartholomew Shower* for the Defendant said, that an Executor Attorney being Plaintiff, has no Reason to have his Privilege; but it seems otherwise where he is Defendant; for there it seems to be as reasonable, as when he is sued in his own Right. *Broderick* for the Plaintiff. *Gages's Case*, *Hob.* 177. is express in the Point to the contrary. *Holt* Chief Justice: His Privilege extends only to Actions in his own Right: All the Authorities are so, and it has been often held so. *Respondes ouster nisi*, &c. *Lord Raym.* 533.

If a privileged Person brings a joint Action, or if an Action be brought against him and others, he shall not have his Privilege; but this is to be understood where the Action is joint, and cannot be severed; for if the Action can be severed, without doing any Injury, the Officer shall have his Privilege. *Dyer* 277. *Godb.* 10. 2 *Rol. Abr.* 275. 2 *Lev.* 129. 1 *Vent.* 298.



An Officer shall not have his Privilege against the King; for as the executive Power is lodged in the King, it would be unreasonable that his Court, which gives Relief to private Persons, should protect any Subject from being brought to Justice for offending against the Laws, which concern the whole Commonwealth. 2 Rol. Abr. 274. Bro. Supersedeas 1. 9 Hen. 6. 44. But in an Action *Qui tam*, at the Suit of an Informer, he shall have his Privilege. Lil. Reg. 7.

If an Attorney of the Common Pleas be in *Custodia Marefch.* for want of Bail, at the Suit of *A.* he may plead his Privilege. But if he be in *Custodia Marefch.* at the Suit of *A.* and *B.* declares against him in *Custodia Marefch.* if he has waived his Privilege as to *A.* he cannot take Advantage of it against *B.* For this see 2 Rol. Abr. 275. 1 Salk. 1. 5 Mod. 310. Carth. 370. 3 Lev. 243.

*Boduiner* being an Attorney of the Common Pleas, was sued by *J. S.* in *B. R.* and gave Bail, and was declared against as in *Custodia*. The same Term, one *Jones* delivered a Declaration by the By against him; to which he pleaded his Privilege: Plaintiff replied, that the Defendant was in *Custodia Marefch.* at the Suit of *J. S.* and was delivered out to Bail; and that during the Continuance of that Suit, he exhibited his Bill *secundum Curs. Cur. &c.* Defendant demurred, and it was urged *pro Quer.* that the Defendant had allowed the Jurisdiction of the Court by giving Bail, and had waived his Privilege. 2 Rol. 275. *Et per Cur'.* 1. Defendant might plead his Privilege to the first Action, for he comes here

Privilege of  
Attorney of  
C. B. pleaded  
by Defendant  
in *Custod. Mar.*  
after giving  
Bail.

by Coercion, and had no Opportunity to claim Privilege till now; and therefore tho' a Man be in *Custodia Mareſch.* one may claim Contumace, 22 *Aff.* 83. 26 *Hen.* 6. 7. and it is absurd that the Defendant should be in a worse Condition as to *J. S.* than he was to the first Plaintiff, when this second Suit is topped on the Action of the first Plaintiff; and 'tis clear the Defendant might plead his Privilege to the first Action, notwithstanding his being in *Custodia Mareſch.* Yet the Court held, that if it had been waived as to the first Action, it would have been waived as to the second also. 1 *Salk.* 1.

Flea of  
Privilege.

Debt *Qui tam* against an Attorney of the Common Pleas, for exercising the Office of Under-Sheriff longer than one Year. He pleads his Privilege, and it was allowed: The Court said it would be otherwise in Case of an Information; but Debt *Qui tam* is perfectly the Suit of the Party, tho' the Attorney General may proceed for the King, if the Party release or become nonsuit. Note; he was admitted to plead to the Jurisdiction without making Defence. *Contra* 1 *Inst.* 127. *b.* *Comb.* 319.

After a general Imparlane, an Attorney or Officer cannot plead his Privilege, because by imparling he affirms the Jurisdiction of the Court; but by the better Opinion, it seems, that after a Special Imparlane he may plead his Privilege. *Bro. Priv.* 25. 22 *Hen.* 6. 6, 22, 71. 1 *Rol. Rep.* 294. 1 *Sid.* 29. 2 *Roll's Abr.* 273, 279. *Hard.* 365. 1 *Lutw.* 46. 1 *Salk.* 1.

In

In Debt upon an Escape after Execution, the Defendant appeared, *et defendit Vim et Injuriam quando*, &c. and imparled Specially, saving to himself all Advantages and Exceptions, *quoad Billam prædictam*; And whether or no after such an Imparlance, he must be allowed his Privilege, as Marshal of the King's Bench, was now the Question. Hardr. 365.  
16 Car. 2. in  
the Exchequer.

In this Case it was held *per Curiam*, that there are three Sorts of Privilege in this Court; first, as Debtor. Secondly, as Accountant. And thirdly, as Officer. Against the first of these any Man that has a Special Privilege in another Court, as an Officer of the Court, or as an Attorney, shall have his Privilege: Because the Privilege of a Man as Debtor, is but a *general* Privilege. But if an *Accountant* begin his Suit here, no Privilege elsewhere shall be allowed; because an Accountant has a special Privilege by reason of his Attendance here to pass his Account: And the King has a particular Concern in his Attendance. The same holds in Case of an Officer of the Court: If he commence a Suit here, no Privilege in another Court shall prevail against him; because his Attendance here is requisite, and his Privilege here is attached first, by his commencing his Suit: And herewith all the Precedents agree. *Vide 9 Ed. 4. 53. Per Cur'*: But if an Accountant has finished his Account, and reduced it to a Certainty, so that it is become a Debt; he shall then have no other Privilege, than a general Debtor has. So a Servant to a Minister or Officer of the Court has no Privilege against a privileged Person elsewhere. The Court held likewise, that after such De-



*senes* as aforesaid, Privilege may be allowed: For it is not a full Defence, nor does he go about to oust the Court of Jurisdiction; but only claims his Privilege. Likewise after a special Imparance *Salvis omnibus Advantagiis et Exceptionibus*, a Man shall have his Privilege. But if the Imparance be Special, *quoad Billam, breve seu Narrationem*, there it shall not be extended further; and after such an Imparance, Privilege is not allowable: As appears 7 Hen. 6. 39. 22 Hen. 6. 7. 9 Ed. 4. 53. And when Day is given before the Court, it is called *Dies datus*; when after, it is called an Imparance. But upon the Defendant's Prayer, it was adjourned.

In an Action against B. he pleaded *Quod ipse est unus Attornat. Cur. Domini Regis de B.* without saying *fuit Tempore Impetrationis brevis*; and a *Respondeas ouster* was awarded. 1 Salk. 1.

If a Sworn Attorney or other Officer of any of the Courts of *Westminster-Hall* be chosen Constable, he may have a Writ of Privilege for his Discharge; and it is held, that such Officers shall have this Privilege, not only where there is no special Custom concerning the Election of Constables, but also where they are chosen by a particular Custom in respect of their Estates or otherwise; for that no such Custom shall be supposed to be more ancient than the Usage of those Courts, and therefore shall give Way to them. *March* 30. *Noy* 112. *Co. Car.* 389. 2 *Keb.* 477.

An Attorney, being chosen Churchwarden of a Parish, may have a Writ of Privilege: So a Writ of Privilege was signed by all the Court of C. B. for G. a Clerk under the *Custos*

*Brevium*, to free him from being a Soldier; and it is therein recited, that it is the Privilege of the Court, that neither the Attornies nor Clerks of it should be elected to any Office without their Consent, but ought to attend the Service of the Court. 2 *Rol. Abr.* 272. *Palm.* 392. 1 *Lev.* 265. 1 *Vent.* 16, 29. *Raym.* 180. *Cro. Car.* 11, 389, 585.

*Gale* an Attorney of *B. R.* was elected one of the twenty-four Burgesses in the Town of ———, and because he refused to serve, was fined Ten Pounds: Then he procured a Writ of Privilege, which he shewed; after which Debt was brought for the Ten Pounds in *B. R.* and it was prayed after Impar lance to stay the Action against *Gale*, because that after Impar lance he could not plead his Privilege to the Action; and *Stone's Case* was cited, who was elected Reeve to collect the Rents of the Lord at *Harrow on the Hill*, and was discharged by his Writ of Privilege. The Court held, that the Privilege of an Attorney was a good Discharge in this Case: They likewise held, that the Writ of Privilege had a Retrospect to the Whole, and that being discharged from the Office, he was discharged from the Fine also. 3 *Keb.* 512.

In the Case of *Evedon* an Attorney of *B. R.* it was determined, that he was not obliged to serve in the Train-Bands, or to find a Deputy for that Purpose, altho' the Array and Muster of these is directed by several Acts of Parliament which contain general Words; for his Privilege shall exempt him from Offices, as well created by Statute as those at Common Law, if there be not an exprels Clause for taking

Attorney not  
obliged to  
serve in the  
Train-Bands.

taking away his Privilege. *Mich. 9 Geo. 2. in B. R. Evedon's Case, Stran. 1143.*

A Serjeant at Law, Barrister, Attorney or other privileged Person, whose Attendance is necessary in *Westminster-Hall*, may lay his Action in *Middlesex*, tho' the Cause of Action accrued in another County; and the Court on the usual Affidavit will not change the Venue. *Styl. 460. 1 Mod. 64. 2 Show. 242.* But it hath been held, that if a privileged Person be sued, and the Action brought against him in the right County, his Privilege will not intitle him to have it tried in *Middlesex. Carth. 126. 1 Show. 148. Bisse v. Harcourt.*

If an Attorney lays his Action in *London*, the Court will change the Venue on the usual Affidavit; for by not laying it in *Middlesex*, he seems regardless of his Privilege, and is to be considered as a Person at large. *2 Vent. 47. Salk. 688.*

Where one Long an Attorney of *C. B.* was arrested in *Palace-Yard* not far from the Hall-Gate, sitting the Court, he, together with the Officer, was brought into Court, and the Officer committed to the *Fleet*; and because the Plaintiff was an Attorney of *B. R.* who informed the Court of *C. B.* that his Cause of Action was 200*l.* the Court ordered that another of the Sheriff's Bailiffs should take Charge of the Prisoner, and that the Prothonotary should go with him to the Court of *B. R.* and that Court being informed how the Case was, discharged the Defendant on common Bail. The Writ upon which he was arrested was an Attachment of Privilege, which the Court supposed to be designed to oust him of his Privilege;



vilege; for there was another Writ against him at the Sheriff's Office, at the Suit of another Person. 2 Mod. 181. Long's Case.

An Attorney of C. B. pleaded to the Jurisdiction of the Court of B. R. *et per Curiam*, he shall not be sworn to his Plea, nor need the Writ of Privilege be set forth at large; and if Matter of Fact be pleaded in Abatement, and found against the Defendant, Judgment final shall be given. 6 Mod. 114.

It hath been a Matter of great Doubt, how far an Attorney of C. B. or other Person privileged, being *in Custodia Marecalli*, shall be ousted of his Privilege; for as on the one Hand being in actual Custody, he is to answer to the Plaintiff's Demand lodged against him, and not to the Process that brought him in; and on the other Hand, it being thought hard that his being there by Coercion and on a fictitious Trespass, should oust him of his real Privilege: The Determinations herein have been, 1st, That tho' A. be *in Custodia Marecalli* at the Suit of B. yet when B. declares against him he may plead his Privilege, because he comes there by Coercion, and had no Opportunity before to take Advantage of it. 2dly, If A. files Bail at the Suit of B. and in the same Term a Declaration is delivered against A. at the Suit of C. A. may plead his Privilege against C. as well as against B. for it were absurd that C. who tops his Suit upon the Action of B. should have more Liberty or Advantage against A. than B. himself had. 3dly, But if it be in a subsequent Term, or if by any Thing A. waives his Privilege in the first Action, he then becomes obnoxious to the

the Suits of every one; and as to C. he is truly in *Custodia Marefcalli*; for being once ousted of his Privilege, he can no longer attend as an Officer in the other Courts, but is fixed in the King's Bench; and therefore cannot by the Supposition of the Necessity of his Attendance oust the Party of his Action.

2 *Bulst.* 207. 2 *Rob. Abr.* 275. 1 *Salk.* 1. 5 *Mod.* 310. 3 *Lev.* 343. *Carth.* 377. Lord *Raym.* 93, 136.

So if an Attorney of C. B. is brought into the Court of B. R. at the Suit of an Attorney there, which is an Estoppel to the Defendant's Privilege, the Defendant shall be ousted of his Privilege in all other Actions commenced against him in B. R. in the same Term; because the Jurisdiction of this Court was attached upon him by the first Action. *Carth.*

377.

S. C. *Salk.* 1. Privilege pleaded after a Special Impar-  
lance.

Conclusion without *Prout* patet per *Recordum* is but Form.

*Duncomb* commenced an Action in B. R. against the Defendant, who imparled with *Salvis omnibus Advantagiis quoad Billam predictam*, and afterwards pleaded Privilege in C. B. as Warden of the Fleet. The Plaintiff replies, that at the Time of the exhibiting of his Bill, the Defendant was in *Custodia Marefcalli in quodam Placito Debiti ad Sectam* A. B. an Attorney of the King's Bench. The Defendant demurs. An Exception was taken to the Replication, because it does not say, *Prout patet per Recordum*, and therefore the Defendant is deprived of the Benefit of joining Issue. But *per Curiam*, it is aided by the general Demurrer, and so it has been often ruled in the King's Bench. For if the Record be shewn in Pleading, the Plaintiff may reply *Nul tiel Record*,

*Record*, altho' the Defendant has not concluded with *Prout patet per Recordum*; and therefore it is but Form. See 1 *Saund.* 98, 328. 1 *Sid.*

324. And *Holt*, after Argument at the Bar, seemed to be of Opinion, that the Plea was ill,

1. Because after a general Imparlanee, this Matter could not have been pleaded; then though there is a Special Imparlanee, yet this Imparlanee is with *Salvis omnibus Advantageis ad Billam* only, and therefore this Plea, which is to the Jurisdiction, is not saved. 2. It seemed to him, that a privileged Person may plead his Privilege, notwithstanding that he is in Custody of the Marshal, and declared against as in Custody. But if he be in Custody upon a Waiver of Privilege, or upon Attachment of Privilege, he is liable to Actions of all Men. It seems hard, that whilst a Man waives his Privilege to one Action, he should be exposed to all Men; but if the Case were so, it ought to be pleaded Specially. But to this Matter no positive Resolution was given, because the Suit was discontinued by Consent of the Parties. *Lord Raym.* 93. *Mich.* 8 *Will.* 3.

Privilege is not pleadable after a Special Imparlanee with *Salvis Advantageis* only *quoad Billam*.

If a Man in Custody of the Marshal may plead Privilege.

An Attorney of the Common Pleas being arrested in the Country at the Suit of an Attorney of the King's Bench, gave Bail in the King's Bench, which was filed, and then a Declaration by the By was delivered against him the same Term at the Suit of another Man, to which he pleaded his Privilege. And it was resolved, 1. That though *A.* be in *Custodia Marefcalli Marefcalcae* at the Suit of *B.* yet when *B.* declares against *A.* *A.* may plead his Privilege, because he comes here by Coercion, and had no Opportunity before to take Advantage

A Man in Custody may plead his Privilege, either against him at whose Suit he is in Custody, or against another Man.

Consuance demandable by a Man in *Custodia Marefcalli*



Advantage of it. See 22 *Affis.* 83, 4. and 26 *Hen.* 6. 7. Conusance may be demanded, though a Man be in Custody of the Marshal. *Pari ratione* he may plead his Privilege. Second Resolution: If *A.* files Bail at the Suit of *B.* and in the same Term a Declaration is delivered against *A.* at the Suit of *C.* *A.* may plead his Privilege against *C.* as well as against *B.* for it were absurd that *C.* who tops his Suit upon the Action of *B.* should have more Liberty or Advantage against *A.* than *B.* himself had. But if by any Thing *A.* waives his Privilege in the first Action, he is then obnoxious to the Suits of every Body, notwithstanding his Privilege. 3. Resolved, that if after the Defendant has waived his Privilege, he shall yet plead it, the Plaintiff in his Replication must shew his Waiver, and rely upon the Estoppel. *Hil.* 8 & 9 *Will.* 3. *Lord Raym.* 135. *S. C.* 1 *Salk.* 1. 5 *Mod.* 319. 1 *Salk.* 173.

As to the Time of pleading Privilege, it has been laid down in a Variety of Cases as a sure Rule, that after Impar lance the Defendant cannot plead his Privilege, because by imparling he affirms the Jurisdiction of the Court, which by this Plea he would oust; but herein these Distinctions have been taken, and the Law herein by the modern Authorities seems now established, that after a general Impar lance, the Defendant cannot plead Privilege, because he must then plead in Chief: So after a Special Impar lance in this Manner, *Salvis omnibus Allegationibus et Exceptionibus Omnimodis tam ad breve quam ad Narrationem*; for by this Special Impar lance he has confined himself

himself to take Advantage of Defects in the Writ and Count only; but in Case of a general Special Impar lance obtained from the Court, viz. *Salvis sibi omnibus et omnimodis Advantageis et Exceptionibus*, he may after plead his Privilege; for this is not to oust the Court of its Jurisdiction, but is a Privilege which each Court allows to the Officers of the other, to be sued in their own Court only. 26 Hen. 6. 7. 2 Rol. Abr. 275, 276. Dyer 33. Godb. 286. Styl. 295. 1 Lev. 54. 1 Keb. 195, 221, 256. 2 Show. 145. Hard. 365. 1 Sid. 318. 2 Keb. 103, 121, 163. 1 Show. 49. Lutw. 46. Salk. 1. Comb. 68.

When an Attorney or other Officer intituled to Privilege is Plaintiff, he regularly sues by Writ of Privilege, and is sued by Bill; which Processess issue out of the Court in which the Action is commenced, and have no Foundation in Chancery.\* 4 Inst. 71, 99, 112.

But an Attorney is not obliged to sue by Writ of Privilege, but may sue by Original; but if he elects the former, he must name himself Attorney, &c. for when any particular Character or Relation gives any Person Right and Privilege, it must be set forth. 1 Vent. 199. 28 Ed. 3. 4. Cro. Eliz. 731.

And therefore it hath been held, that if an Attorney sues by Original, he must declare as others do; and that if he does otherwise, it will be fatal on a Special Demurrer, tho' aided

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\* In the Exchequer, when the Plaintiff is privileged, the Suit is by *Quo minus*; where the Defendant is privileged, the Suit is by Bill. Salk. 546.

after Verdict, and also good on a general Demurrer. 2 Lev. 40. 1 Vent. 198. 2 Keb. 860, 879. 3 Keb. 15.

An Attorney of C. B. must plead his Privilege in B. R. and cannot be discharged on common Bail.

*Abney* moved, that the Defendant being an Attorney of C. B. might be discharged on Common Bail; suggesting it to be the Practice of C. B. to pay that Respect to the Attornies of B. R. if they are sued there, and cited 2 Mod. 181. 1 Mod. 10. Salk. 544.

*Strange contra* asserted, that there was no such Practice in C. B. and as to the Cause in 2 Mod. it is so far from being an Authority for the Defendant, that it appears the Common Pleas did not discharge him, though arrested in the Palace-Yard, but send him up to the King's Bench. And the other two Cases are of Attornies of the same Court, who no Doubt are to be discharged on Common Bail. *Et per Curiam*, The Defendant must find Special Bail here, and may plead his Privilege in Abatement after.

Accordingly he put in Bail, and pleaded his Privilege; to which the Plaintiff demurred, and objected, that he had not averred himself to be an Attorney at the Time of filing the Bill, but only at the Time of Pleading; it is *ante Exhibition Billæ facit* (instead of *fuit*) *et adhuc existit in Attornatorum de C. B.* and for this Fault the Court held it ill, and awarded a *Respondes ouster*. Stran. 864.

An Attorney though Servant to a Peer has no Privilege of Parliament.

The Sheriff of *Middlesex* moved to discharge a Rule to return his Writ, upon Affidavit that the Defendant was a menial Servant of the Lord *Say and Seale*, and that my Lord had claimed him upon his being arrested, upon which he had discharged him; but it appearing to



to the Court, that the Defendant was an Attorney, and that it was a standing Order of the House of Lords, 24 March 1696, that no common Attorney or Solicitor, though employed by a Peer, shall have Privilege; the Court refused the Motion, and ordered the Sheriff to return his Writ. *Stran.* 1065.

It was held by the Court, that if the Plaintiff and Defendant are both Attornies, the Defendant must be sued by Bill; and that the Plaintiff cannot take out an Attachment, and hold the Defendant to Bail, as he does in the Case of a common Person. This Case therefore is an Exception out of the general Rule, that Privilege takes away Privilege. *Stran.*

An Attorney must be sued by Bill, tho' the Plaintiff be also an Attorney.

1141.

The Defendant pleaded the Privilege of *G.B.* and the Plaintiff moved to set it aside, he suing as an Attorney of *B.R.* upon the Foot of Privilege taking away Privilege; but the Court said, that was a Point of Law which they would not determine on a Motion, but put the Plaintiff to demur to it. *Strange pro Quer'.*

An Attorney suing by Original waives his Privilege.

*N.B.* This was moved again next Term by *Reeve*, and we produced the Declaration, by which it appeared the Plaintiff sued by Original, which was held a Waiver of his Privilege. *Stran.* 837.

The Question was, Whether in an Action against an Attorney, he had Privilege to change the Venue into *Middlesex*, as well as to lay it there, when he is Plaintiff; and the Court held there was no Difference. *Vide Salk.* 668.

Where an Attorney is Defendant he may change the Venue into *Middlesex*.

2 *Show.* 176. 2 *Lill. Pract.* Regist. 370. 1

*Keb.*

*Keb. 277. Mich. 11 Geo. 1. Townsend v. Duppa, (ante 610) 2 Vin. 47. The Venue was changed into Middlesex in the Case. Stran. 1049.*

**An Attorney shall have Privilege when he sues a Member of a University.**

An Attorney of the Common Pleas sued a Member of the University of Oxford, who prayed his Privilege, which is not to be sued in another Place. And *per Powel* Justice, the general Words of the Statute will not extend to take away a Privilege before *in esse*, but will extend to other Persons. If the Statute had not had any Construction, unless it extended to Persons who had Privileges before; then it would take away their Privilege. But here the Statute may have another Construction, and the Words of the Statute are not in the Negative. See *3 Cro. Harris's Case* 180. And it is a reasonable Construction to say, that the general Words will take away the general Liberty which every one hath to sue where he pleases; and take away the special Liberty that a Man hath to sue in *C. B.* and adjudged accordingly. See *Litt. Rep. 304. Id. Raym. 342.*

**Privilege of C. B. must be waived by Act in Court of Record.**

An Action upon a Bill of Exchange. The Defendant pleaded in Abatement, that he was Clerk to one of the Prothonotaries of the Common Pleas, and ought not to be sued (except for Treason or Felony) in any other Court than in the Common Pleas (and lay a Custom in the Negative) without his Consent. The Plaintiff replies, that the Defendant consented to be sued in the King's Bench. The Defendant demurs; and the Bill was abated, because the Consent intended in the Plea is a

Waiver of the Privilege by some Act in a Court of Record. And as to the Exception taken, that the Custom was laid in the Negative, *Holt* Chief Justice said, that it was a Privilege due to the Clerks of the Common Pleas of Common Right, of which the King's Bench will take Notice; otherwise perhaps it might be of the Clerks of the Exchequer. *Ld. Raym.* 869. *S. C. Farref.* 97. *Salk.* 4.

The King's Bench will take Notice of the Privilege of the Common Pleas.

Debt on a Bond. Condition to perform an Award, which was, that the Defendant should pay to the Plaintiff or his Assigns 50*l.* *et superinde* the Plaintiff should seal a Release to him of all Actions and Controversies *tangen' Præmissa*. Mr. *Chefhyre* for the Defendant took Exception, the Award was not mutual; for the 50*l.* being awarded to be paid generally, and the Release, which was all the Defendant was to have, being only of all Actions *tangen' Præmissa*, that should be taken to relate only to the 50*l.* and not to the Controversies submitted. The Court on the contrary; that it should be understood of the Controversies.

When the Privilege of the Common Pleas was laid with a double Negative, which was a Denial of the Privilege, the Plea was overruled.

2. It is not said, the Defendant did not pay to the Plaintiff's Assigns, which is naught. 2 *Sid.* 41. *Crō. Eliz.* 348. The Court contrary; because they held Payment to the Plaintiff's Assigns had been Payment to the Plaintiff himself; otherwise in the Case in 3 *Crō.* for not repairing, because the Thing demised there was not demisable over. Judgment for the Plaintiff. *Lord Raym.* 898. *S. C. Salk.* 328.



Plea of Privilege of Attorney of the Common Pleas need not say, *Prout patet per Recordum.*

The Defendant pleaded his Privilege of Attorney of the Common Pleas to an Action brought in this Court, and pleaded it without producing a Writ of Privilege. Mr. *Ward* took Exception to the Plea, that where the Defendant laid himself to be an Attorney, he did not say, *Prout patet per Recordum*; and yet Attorney or not must be tried by the Record.

Mr. Serjeant *Broderick* said, that the Precedents were all otherwise, and that they need not aver it by the Record; because the Matter of Record was not the only Matter in Issue, but also the Identity of the Person.

The Court inclined against the Exception, but gave Day over to search Precedents. And now Mr. Serjeant *Broderick* said, he could not find any ancient Precedents; but there were some in some later Books, and they were all without; as 1 *Brown. Intr.* 2 *Thompf. Intr.* 4. *Clift's Intr.* 570. and he said, that the Plaintiff by his Demurrer had confessed, that the Defendant was an Attorney.

*Holt* Chief Justice said, that a Demurrer confessed nothing but what was well pleaded; they all agreed, that Attorney or not, was triable by the Record.

Two Ways of pleading Privilege of Attorney so as it cannot be denied.

The Chief Justice said, there were two Ways of pleading this Matter; so as it could not be denied, viz. with a *Profert* of a Writ of Privilege, or of an Exemplification of the Record of his Admission of Attorney, or else it may be pleaded as it is here; and as to the Averment by the Record, it is never pleaded as a Matter of Record, which is always pleaded with

with Time, viz. of such a Term, &c. but never any Plea was seen, that the Defendant was such a Term admitted an Attorney, &c. he said, that in an Avowry for a Fine in a Court Leet, you never say, *Prout patet per Recordum*; he said, that the Plaintiff in this Case might have pleaded *Nul tiel Record*. The Exception was over-ruled.

Mr. Ward took another Exception, that there was no Place laid, where the Defendant was Attorney, nor where the Common Pleas was; and though by the Statute the Common Pleas is to be held *in aliquo certo Loco*, yet that need not be *Westminster*, but may be *Hertford*, &c.

The Chief Justice said, it was not necessary to lay a *Venue* where the Defendant was Attorney, because that being a Matter concerning the Person of the Defendant, should be tried where the Writ was brought. And therefore where *Alien nee* is pleaded in Abatement, the Plaintiff may reply generally, that he was born in *England*, without laying a Place, because it shall be tried where the Writ is brought. But if *Alien nee* be pleaded in Bar, there the Plaintiff must reply, that the Plaintiff was born in *England*, viz. at such a Place.

Powell agreed; and he put the Case, where in Trespass the Defendant justifies, because the Plaintiff is his *Villein regardant* to such a Manor, &c. the Plaintiff replies, that he is free; he need not alledge a Place, because it shall be tried where the Writ is brought. And as to the Matter of laying a Place for the Com-

mon Pleas, the Chief Justice said, it was not necessary, for they could write to the Chief Justice of that Court by that Name, wherever the Court was; and he could not imagine the Reason, why it had been held necessary to shew it in Pleading a Record, unless it were, that that was Part of the Description of the Record. *Lord Raym.* 1172. *S. C. Salk.* 545. *Lill. Entr.* 3.

*Seymour Richmond*, an Attorney of this Court, having been elected a Bailiff of *Abingdon* in *Berkshire*, obtained a Writ of Privilege to excuse him from serving that Office. *Baynes* moved on Behalf of the Corporation, that the Writ of Privilege might be set aside upon Affidavit that *Richmond* was a Member of the Corporation, and had served several Offices there; and had taken an Oath to conform to the Orders of the Corporation. *Per Cur'*: This is not a proper Manner of disputing the Validity of the Writ; the Court will not advise the Corporation how they are to act with regard to paying Obedience to it; they must act at their Peril. No Rule.

How far the Court will set aside a Plea of Privilege, by reason that there is no Affidavit annexed to it.

A few Days ago *Mr. Parker* had obtained a Rule for setting aside a Plea of Privilege, there being a Writ of Privilege; but no Affidavit annexed to it. *Mr. Proffor* came now and moved to discharge it, by reason that, as he apprehended, the Writ of Privilege itself was sufficient. But the Court said, that it is not ascertained by the Writ of Privilege, that the Defendant was an Attorney of the Common Pleas at the Time of the Action commenced



menced against him in this Court; for which Reason they thought, that an Affidavit ought to have been annexed to the Plea. Accordingly refused to discharge the Rule. *Mich. 6 Geo. 2. 1732. Banks and Doyley. 2 Barnardist. 216.*

It was moved, that one *Redman* an Attor- Attorney not  
ney of the Court, who was going into *Ireland*, compellable to  
might put in Special Bail. *Twisden*. A Clerk put in Special  
of the Court cannot put in Bail; you have Bail.  
filed a Bill against him, and so waived his putting in Bail. *Kelynge*. You may remember *Wolly's Case*; that we discharged him by reason of his Privilege, and took common Bail. *Twisden*. You cannot declare against him in *Custodia*: But though we cannot take Bail, yet we may commit him, and then deliver him out by Mainpernancy. *Jones*. If he be in Court in *propria Persona*, you cannot proceed against his Bail. The Court agreed, that the Attorney should not put in Bail. *1 Mod. 10.*

Upon a Trial at Bar in *B. R.* in an Ejectment brought by the Heirs at Law, against the Lord *Say and Seal*, who claim'd as Heir in Tail, the single Question was, Whether or no a common Recovery, that was suffer'd in order to dock the Intail, was good or not? The Objection to the Recovery was, that there was no Tenant to the Præcipe.

To prove the Recovery good, a Deed, bearing Date the 23d of *October 1701*, directing the Uses of the Recovery and the Fine, viz. the Chirograph of the Fine and Common Recovery, were produced.

The

Attorney not  
to be examin-  
ed concerning  
the Secrets of  
his Client's  
Cause.

The Counsel for the Lord Say and Seal de-  
fired to call one *Knight* an Attorney at Law,  
to prove, that tho' the Deed was dated *October*  
23. it was not executed until five Months after,  
*viz.* in *March*. N. B. The Attorney was the  
Person intrusted in suffering the Common Re-  
covery.

The Counsel for the Heirs at Law oppos'd  
the swearing the Attorney; because as an At-  
torney has a Privilege, not to be examined as  
to the Secrets of his Client's Cause, so the At-  
torney's Privilege was likewise the Client's  
Privilege; for the Client intrusts an Attorney  
with the Secrets of his Cause, upon Confidence  
not only that he will not, but also that tho' he  
would, yet he should not be admitted by the  
Law to betray his Client, and for this *Hol-  
becke's Case* was relied upon: Besides, it was  
said that his Evidence would tend to accuse  
himself, either of Ignorance, Negligence, or  
something worse; and in *Moore's Reports*, an-  
ticipating Deeds, Felony.

The Court were of Opinion, that *Holbecke's*  
*Case* was good Law; and that an Attorney's  
Privilege was the Privilege of his Client; and  
that an Attorney, tho' he would, yet should  
not be allowed to discover the Secrets of his  
Client: But notwithstanding this, they thought  
*Knight's* Evidence was to be received; for that  
a Thing of such a Nature as the Time of ex-  
ecuting a Deed, could not be call'd the Se-  
cret of his Client; that it was a Thing he  
might come to the Knowledge of without his  
Client's acquainting him, and was of that Na-  
ture,

ture, that an Attorney concerned, or any Body else, might inform the Court of. *Mieb. 10 B. R. Lord Say and Seal's Case, Lucas 49.*

An Attorney of this Court being chosen to be of the Common Council in a Corporation and refusing, was fined. And it was held by *Hale*, that upon an Action of Debt brought for the Fine, he might plead his Privilege; for he ought not to have been chosen; then the Fine was never lawfully set. *Trin. 1675. in B. R. Freeman 407.*

When in Debt against an Attorney for a Fine set for refusing to accept an Office in a Corporation, he may plead his Privilege.

The Plaintiff was an Attorney of this Court, and sued the Defendant by Writ of Privilege; the Defendant was an Attorney of the Court of Common Pleas, and he pleaded, that for that Reason he ought to be sued no where else.

How far the Court will not set aside a Plea of Privilege.

*Mr. Strange* said, that no Rule was more known, than that where the Plaintiff and Defendant are both privileged Persons, the Plaintiff's Privilege shall be allowed; and therefore he moved, that the Court would set the Plea aside, as it was merely dilatory. The Court said, that it has been a Question formerly disputed, whether such a Plea was not good; and therefore, to be sure, they would not now set it aside as frivolous: However, if *Mr. Strange* could find any Cases to warrant his Motion, they told him he might move it again. *Trin. 2 Geo. 2. Hetherington and Lowther, 1 Barnardist. K. B. 182.*

The Defendant pleaded his Privilege, that he was an Entering Clerk of *Sir George Cooke*, and made Affidavit annex'd to his Plea, that he solicited Causes in the Common Pleas. But he solicited Causes in the Common Pleas. But

How far a Plea of Privilege shall not be said to be well verified on Affidavit.



on Rule to shew Cause, the Court set the Plea aside; for they said, he ought to have sworn, that he entered Causes in the Office, and so shewn, that he did Business in the Capacity of an Entering Clerk; but the swearing that he solicits Business in that Court is a Thing of a different Nature. *Hil. 2 Geo. 2. Edmund and Thomas, 1 Barnardist. K. B. 141.*

The Time  
which a privi-  
leged Person  
is bound to  
declare in.

A Judgment having been referred to the Master for Irregularity, he reported, that the Suit was by Writ of Privilege, brought by an Officer of this Court; but he did not declare till within a Term after the Writ was returnable: However, he signed his Judgment for want of the Defendant's Pleading within four Days after. This the Master reported to be irregular, for by not declaring immediately, he waived the Advantage he might otherwise have had. Accordingly the Court set the Judgment aside. *Hil. 2 Geo. 2. Harcourt and Ballard, 1 Barnardist. K. B. 296.*

Writ of Privi-  
lege to excuse  
an Attorney  
from serving  
in the Trained  
Bands of the  
City, the Ser-  
vice being  
personal.

An Attorney,  
who had been  
at his own  
Instance  
struck out of  
the Roll, re-  
stored to his  
Privilege on  
Motion.

The Court, after hearing Counsel for *Heaton*, and for the Deputy Lieutenancy who opposed his Motion, made the Rule absolute for a Writ of Privilege, to excuse *Heaton* from serving in the Trained-Bands of the City of *London*, the Service being personal. *2 Barnes 33.*

In the Treasury Chamber, 22d of June, Mr. *John Moody*, of *Havant* in the County of *Southampton* had been, at his own Instance, struck out of the Roll of Attornies, and was put into the Commission of the Peace, and made a Commissioner of the Land-Tax; he now moved upon an Affidavit (setting forth his

his Reasons) to be restored to his Privilege; which was granted, he consenting to take no Advantage of any Action pending, if such there be. 2 Barnes 33.

Defendant being indebted to Sir John Wray by Promissory Note, Sir John left the Note with Lunn, to put it in Suit: Lunn contrived to bring the Action in his own Name, as Indorsee, and arrested Astough by Attachment of Privilege, and held him to Bail, upon an old Notion, that Privilege cannot be pleaded against Privilege of equal Nature. The Attachment was a *Non omittas*, without an Attachment to warrant it. *Per Cur:* Attornies Privilege is for the Sake of the Suitors; one Attorney is not to sue another of the same Court by Process, but ought to do it by Bill; an Attorney of the King's Bench ought to sue an Attorney of this Court by Bill, and an Attorney of this Court ought to sue an Attorney of the King's Bench in like manner. Plaintiff's Privilege ought not to draw Defendant into another Court. *Radcliffe against Baily, Mich. 14 Geo. 2. in B. R.* the same Determination. Plaintiff and Defendant were both Attornies of that Court: But not as to an Attorney of the Court suing an Attorney of another Court. 2 Barnes 34.

Pending a Fore-judger obtained against Defendant by another Person, Plaintiff sued him by Bill, as having Privilege of an Attorney. Defendant moved to set aside the second Fore-judger, insisting that his Privilege was suspended by the first; and Plaintiff ought to have sued him by Original in the common Way.

An Attorney forejudged must be sued in the common Way by Original; and a second Fore-judger obtained pending the first, set aside.

Law of, &c.

Way. Rule to shew Cause made absolute,  
without Opposition. Eyre for Defendant.  
2 Barnes 35.

Attorney of C.B. may, for a Debt *bona fide* (but not a Note colourably indorsed without Consideration) sue an Attorney of the King's Bench by Attachment of Privilege, and the King's Bench Attorney would not be intitled to Privilege. But where the Attornies, Plaintiff and Defendant, are both of the same Court, the Proceeding must be by Bill and not by Attachment, Defendant being intitled to Privilege. 2 Barnes 35.

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